DOCUMENT RESUME

ED 193 091 SE 033 146

TITLE	Federal-State Environmental Programs: The State Perspective. Report to the Congress of the United States by the Comptroller General.
INSTITUTION	Comptroller General of the U.S., Washington, D.C.
REPORT NO	CED-80-106
PUB DATE	22 Aug 80
NOTE	107p.; For related document, see SE 033 088. Contains occasional light and broken type.
AVAILABLE FROM	Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (no price quoted).
EDRS PRICE	MF01/PC05 Plus Postage.
DESCRIPTORS	Conservation (Environment); *Environmental Standards; Federal Legislation; *Federal Programs; Natural Resources; Pollution; *Public Administration; Public Policy; *State Agencies; Surveys
IDENTIFIERS	Environmental Protection; Environmental Quality

ABSTRACT

Identified and discussed in this report are the major obstacles administrators of state environmental programs perceive they face when implementing federal environmental laws. These findings are based upon a survey conducted by the United States General Accounting Office (GAO) in 1978. According to state officials, the greatest barriers to effective program management are: (1) delayed and inflexible regulations, (2) excessive Environmental Protection Agency (EPA) control over state programs, (3) inability to fill state staffing vacancies, and (4) delayed and uncertain federal funding. Because of these obstacles and the states' perception that they have been ignored by federal decision makers, the partnership envisioned by Congress between the EPA and the states for administering federal environmental programs has not materialized. Recommendations by the GAO for improving the EPA-state relationship are presented. (Author/WB)

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BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Federal-State Environmental Programs--The State Perspective

In the 1970s the Federal Government increasingly relied on the States to carry out federally mandated environmental programs, and most States have assumed that responsibility. However, the States believe many obstacles impede their implementation of those programs; they are beginning to consider these obstacles when deciding whether to assume more program responsibilities. Because of the obstacles and the States' perception that they have been ignored by Federal decisionmakers, the partnership envisioned by Congress between the Environmental Protection Agency and the States for administering Federal environmental programs has not materialized.

GAO recommends agency action to strengthen the EPA-State partnership.

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AUGUST 22, 1980

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-197043

To the President of the Senate and the
Speaker of the House of Representatives

In enacting many environmental programs, the Congress has placed an increasing reliance on the States and has called for a Federal-State partnership to carry out the programs. This report discusses the Federal-State environmental partnership from the State perspective.

The Congress has expressed concern about Federal-State relationships in the environmental area. Therefore, we made our review to determine the problems States face in implementing environmental programs.

Copies of this report are being sent to the Director, Office of Management and Budget; the Chairman of the Council on Environmental Quality; and the Administrator, Environmental Protection Agency.

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

FEDERAL-STATE ENVIRONMENTAL
PROGRAMS--THE STATE
PERSPECTIVE

DIGEST

The States, which are primarily responsible for carrying out Federal environmental programs, overwhelmingly believe that Federal requirements--legislative, regulatory, and administrative--and the uncertainties of Federal funding impede their management of these programs. State officials feel that they have been largely ignored in Federal decisions affecting their programs.

The Congress intended that the Environmental Protection Agency (EPA) and the States should act in partnership to implement Federal air pollution, drinking water, pesticides, solid waste, and water pollution programs, and the States have generally implemented these programs, enacted enabling legislation, and provided part of the funding.

In the past, GAO and others have reported on the problems EPA faced in administering various environmental programs, but this report presents the managerial obstacles faced by the other members of the partnership--the States. GAO confirmed that the obstacles identified by the States actually existed and tried to determine the impact those obstacles have on the partnership.

State environmental officials identified the greatest overall obstacles to their effective program management as

--delayed and inflexible regulations (see pp. 31 to 51),

--excessive EPA control over State programs (see pp. 51 to 55),

--inability to fill State staffing vacancies (see pp. 60 to 69), and

--delayed and uncertain Federal funding (see pp. 70 to 80).

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DELAYED ISSUANCE AND INFLEXIBILITY OF REGULATIONS

Nearly all environmental programs have been affected to some extent by EPA's late issuance of regulations. State officials identified this as the greatest single obstacle to the management of their programs. As a result, State implementation of programs has been erratic, confused, and slow; legislative deadlines have been missed and extended; and the credibility of some State programs has been hurt. (See pp. 31 to 41.)

While State officials have criticized EPA for issuing late regulations, EPA has not been entirely at fault. Statutory deadlines established for issuing regulations have not always reflected the lengthy time needed to develop major regulations, which can include extensive outside comment. (See p. 41.)

State environmental officials also believe that EPA has not given them the flexibility to adapt their programs or unique characteristics to the national regulations. They identified the inflexibility of EPA regulations as the second greatest obstacle to program management. To these State officials, the price of inflexible national regulations is wasted State resources, stifled initiative, and unnecessary increased costs for environmental control. (See p. 44.)

REGULATIONS NOT THE ONLY CONTROLS OVER STATE PROGRAMS

While regulations are the more obvious examples of EPA controls over State programs, other, more subtle control mechanisms exist which, according to State officials, also impede program implementation. These include

--detailed grant conditions (see pp. 51 to 52) and

--mandatory policy "guidance" (see pp. 52 to 53).

The States' criticism, however, arises not because these controls exist, but because of their excessive detail and inflexibility.

STATE STAFFING PROBLEMS COMPOUNDED BY UNCERTAIN FUNDING AND PAPERWORK

Staffing constraints at the State level are a fact of life. For example:

--State vacancy rates range from 7 to 20 percent of authorized positions. (See pp. 60 to 61.)

--A total of 82 percent of all State program directors are finding it difficult to recruit engineering staff. (See pp. 60 to 62.)

--Professional staff personnel in all programs and nearly all States are taking jobs elsewhere. Over half those leaving have 3 or more years of experience. (See p. 63.)

Although other factors contribute to the problems, the root cause of staffing problems across all environmental programs is low State salaries. Moreover, in the current climate of fiscal restraint and anti-governmental growth, the disparity in salaries is likely to continue. (See p. 64.)

Staffing problems are magnified by delayed and uncertain Federal funding as well as EPA paperwork or reporting requirements. Funding uncertainties preclude effective planning for staff utilization and erode State legislative support for environmental programs. (See p. 70.)

Consistently late annual program grants result in termination or threatened termination of State employees and delays in filling badly needed positions. Moreover, reporting or other paperwork requirements dilute already limited staff by diverting employees from program operations. (See pp. 76 to 80.)

POOR COMMUNICATION HAS STRAINED EPA-STATE RELATIONSHIP

Nearly three-fourths of State environmental officials believe that EPA headquarters staff does not understand the obstacles States face, both individually and collectively, when trying to implement EPA directives. A total of 66 percent of these officials believe that lack of understanding hinders the effectiveness of their programs. (See pp. 10 to 15.) As a result, hostility permeates much of the relationship between the States and EPA. State officials believe that EPA does not trust the States, as evidenced by EPA's total control over their programs through regulations, guidelines, and grant conditions. Much of the problem stems from poor communication. (See p. 11.)

Most troublesome to the States and probably the root cause of many program management obstacles identified by the States is the overwhelming perception by State officials that EPA ignores their comments on matters directly affecting their programs. (See pp. 19 and 20.)

When State officials or their representatives were directly involved in the actual development of regulations and guidelines, they were generally pleased with the practicability of those documents. Conversely, when they did not have input, they were critical of many of the regulations, guidelines, and policy memorandums. (See pp. 20 to 25.)

In contrast to their relationship with EPA headquarters staff, States generally had good relationships with EPA regional staffs. They cited the key ingredients as good communications and interaction between States and regional people who jointly pursued environmental goals. (See p. 12.)

RECOMMENDATIONS

To improve the EPA-State partnership, the EPA Administrator should establish, as a high priority and in conjunction with State representatives, a formal program to improve the partnership. This should include:

- --Establishing procedures to ensure that early State agency input is solicited before any action is taken having a direct bearing on State program implementation.

- --Establishing joint EPA-State committees for each program to review its various aspects, identify implementation problems, and advise the EPA Administrator.

AGENCY COMMENTS

EPA agreed that this report is a valid compilation of State perceptions but said that it lacked balance since only State officials were surveyed. EPA also noted that the report reflects perceptions based on past events rather than more recent ongoing efforts by the States and EPA.

GAO agrees that the report presents primarily State perceptions, but for a good reason. Since the States are generally responsible for implementing these environmental programs, an understanding of the managerial obstacles they face is critical to improving overall program administration. GAO does not agree that the report lacks balance. In every instance where States identified program constraints, GAO confirmed their validity. Moreover, while these State perceptions are the result of accumulated years of frustration, they continue to cloud EPA-State relationships.

On GAO's recommendation to establish a formal program of consultation with State representatives, EPA said it is in the process of getting States more directly involved early in the regulation development procedure. GAO believes such involvement should extend beyond regulation development into other matters affecting State program implementation, such as policy and guideline development.

EPA disagrees with GAO's recommendation to establish advisory committees for each program because such action would be contrary to its attempt to bring environmental programs together and because it has already limited use of advisory committees in response to the

Federal Advisory Committee Act and Office of Management and Budget Circular A-63. GAO continues to believe this recommendation is necessary because programs are still implemented on a programmatic basis and direct State involvement in environmental decisionmaking is needed. Neither the Federal Advisory Committee Act nor Circular A-63 prevents establishing advisory committees if essential to Government operations. (See p. 83.)

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ABBREVIATIONS

AAPCO	Association of American Pesticide Control Officials
ASIWPCA	Association of State and Interstate Water Pollution Control Administrators
CAA	Clean Air Act
CSSE	Conference of State Sanitary Engineers
CWA	Clean Water Act
EPA	Environmental Protection Agency
EPD	Environmental Protection Division
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
GAO	General Accounting Office
I&M	Inspection and Maintenance
NAS	National Academy of Sciences
NGA	National Governors Association
NPDES	National Pollutant Discharge Elimination System
ppm	parts per million
PRM	Program Requirements Memorandum
RCRA	Resource Conservation and Recovery Act
SDWA	Safe Drinking Water Act
SIP	State Implementation Plan
ULV	ultra-low-volume

CHAPTER 1

INTRODUCTION

From creating a single Federal environmental agency to enacting numerous comprehensive laws to control pollution, this Nation made firm long-term commitments in the 1970s to clean up its environment. With this increased emphasis on environmental concerns came an increasing reliance on the States to carry out Federal air pollution, drinking water, pesticides, solid waste, and water pollution programs.

The congressional intent for these programs is clearly that the Environmental Protection Agency (EPA) and the States act in partnership to implement them. Moreover, with limited EPA resources available, State involvement is essential. While we and others have reported primarily on the problems faced by the EPA in administering the programs, this report presents the managerial obstacles faced by the other members of this partnership--the States. We confirmed that the obstacles identified by the States in our questionnaires and interviews actually existed and addressed the impact those State-perceived obstacles have had on the EPA-State partnership.

The extent of State program involvement is dependent on the legislation, EPA eligibility requirements, and the States' willingness to commit the necessary resources. Generally, EPA is responsible for establishing environmental standards, developing and issuing regulations and guidelines, providing research and technical support, awarding and administering grants, and enforcing the various acts. The legislation usually provides for State implementation of the programs within bounds established by EPA and for EPA to carry out the program when a State elects not to do so.

To assist States with program implementation responsibility, EPA awards grants directly to State agencies. Table 1 summarizes the direct grants provided to support State program administrative costs but does not include training funds for State personnel or funds available under the Clean Water Act's (CWA's) State Management Assistance Grant. This management grant could provide an additional $100 million a year to implement water pollution programs.

With some exceptions, States have implemented Federal environmental programs, enacted the necessary enabling legislation, and provided a share of the funding to carry out these programs. In many cases States already had similar environmental programs. However, the transition from State programs to State-run Federal programs has not been an easy one. As the States accepted more responsibility, they found their programs more and more under Federal control. They have been reluctant to accept Federal authority in areas once solely under State purview, and strong philosophical differences persist.

Table 1

Direct EPA Grants for State Administration of Environmental Programs

	Actual fiscal year 1978	Estimated fiscal year 1979	Proposed fiscal year 1980
	--------------(000 omitted)-------------		
Air pollution	$ 61,952	$ 80,000	$ 85,600
Water pollution	53,484	52,400	48,730
Pesticides	7,280	10,750	10,872
Solid waste	14,209	32,190	38,600
Drinking water	20,500	34,000	44,845
Total	$157,425	$209,340	$228,647

STATE ROLES UNDER VARIOUS EPA PROGRAMS

State roles under various environmental protection acts vary but generally provide for joint Federal-State responsibility. The roles of EPA and the States under the acts we reviewed are discussed below.

The Clean Air Act (CAA)

The Clean Air Amendments of 1970 (42 U.S.C. 1857 et seq.) established a joint Federal-State program to protect and upgrade the Nation's air quality. Under this program, the States have primary responsibility for controlling air pollution from stationary sources, while EPA is responsible for controlling pollution from mobile sources, such as automobiles. Most States have assumed responsibility for implementing the act.

The amendments provided for developing and enforcing air quality standards to protect health and welfare. EPA established air quality standards for six pollutants--total suspended particulates, hydrocarbons, carbon monoxide, sulfur oxides, photochemical oxidants, and oxides of nitrogen. The States then developed State Implementation Plans (SIPs) to show how they intended to achieve the welfare standards within a "reasonable time" and the health standards no later than 3 years after the plan's approval. For most States this date was May 31, 1975, but the health standards had not been met by any State as of mid-1977.

The Congress amended the CAA in August 1977, partly to extend the attainment deadlines imposed under the 1970 amendments. Although the basic strategy of the 1970 law remains, the 1977 CAA required each State to submit a revised comprehensive SIP. The most significant section of the SIP was a nonattainment plan, which the States had to submit to EPA for approval by January 1, 1979. 1/ If EPA found the State plan unsatisfactory and/or the State did not submit it by the deadline, EPA could

--withhold or restrict grants for sewage treatment works,

--stop industrial growth,

--withhold air program grants, and

--prohibit certain Department of Transportation projects and grants.

In preparing its nonattainment plan, the State must specifically address those areas in violation of any health standard and provide for attainment by December 31, 1982. If a State can show that the photochemical oxidants and carbon monoxide standards cannot be met despite implementing reasonable emission controls, it may obtain a 5-year deadline extension for those pollutants. To obtain an extension, however, the SIP must include an automobile

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1/Although three States did make partial SIP submissions, none submitted a complete SIP revision by Jan. 1, 1979.

emission control inspection and maintenance (I&M) program; a commitment to establish, expand, or improve public transportation; and a program for selecting a package of transportation control measures.

The Clean Water Act

The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.) totally revised existing water pollution legislation. The amendments established goals to attain water quality by 1983, wherever possible, suitable for recreational contact and the protection and propagation of fish and wildlife, and to eliminate any discharges of pollutants into the Nation's waters by 1985. Moreover, it established specific deadlines for controlling municipal and industrial discharges. The 1977 CWA (Public Law 95-217) amended the act to revise definitions and timetables, continue funding, and address toxic substances. The act contains various provisions, most of which the States have assumed responsibility for implementing.

Construction Grant Program

A major part of the CWA is the Construction Grant Program. Under this program, Federal grants are provided for planning, designing, and constructing municipal sewage treatment facilities. These grants provide between 75 and 85 percent of the facilities' eligible costs. The States determine the specific facilities to be constructed and may provide additional funding support. For fiscal years 1970 through 1979, the Congress appropriated $34.1 billion for this program and authorized an additional $5.0 billion annually through fiscal year 1982.

Although the review and approval processes throughout the Construction Grant Program have generally been a joint EPA-State effort, EPA had delegated some of these responsibilities solely to the States. EPA retains implementing responsibility for those elements not delegated.

The 1977 CWA changes provided States a new incentive to manage day-to-day construction grant activities. Section 205(g) of the act authorizes each EPA-approved State to use $400,000, or 2 percent of its construction grant allocation (whichever is greater), to support State program administration costs. This grant supplements other moneys provided the States for program administration. As of July 12, 1979, EPA had negotiated section 205(g) delegation agreements with 22 States and expected 19 other States to enter into similar agreements by the end of fiscal year 1980.

National Pollutant Discharge Elimination System (NPDES)

The National Pollutant Discharge Elimination System (section 402) is CWA's basic enforcement mechanism. EPA, or one of the 31 EPA-approved States, must issue permits for all discharges into U.S. waters. An NPDES permit, issued for fixed periods not to exceed 5 years, specifies discharge limitations for specific pollutants in substances, establishes schedules and time frames for actions necessary to comply with those limitations, and requires self-monitoring and periodic reporting of plan compliance.

Dredge and Fill Program

The Dredge and Fill Program (section 404) is a permit program which controls the discharge of dredged and/or fill material into navigable waters. This program was originally administered by the Corps of Engineers, but under the 1977 amendments, States can take over the program.

Areawide Planning Program

The 1972 amendments created an Areawide Planning Program (section 208) to address all water quality problems within a geographic area. Under current EPA regulations, each State must either designate a local planning agency or perform the planning function itself. The State or local planning agency was to submit plans to EPA within 2 years, but no later than November 1, 1978. The 1977 CWA changes allowed some flexibility on this deadline. Each plan must identify all water pollution sources within the planning area, determine the extent of pollution, and develop a means to control each type of pollution. The plan is to be updated annually through the State's continuing planning process.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

In 1972 the Congress substantially revised the Federal Insecticide, Fungicide, and Rodenticide Act of 1947 (7 U.S.C. 135) by adding broad new authorities for the comprehensive control of pesticide products. Recognizing that the amended act was not working as expected, the Congress amended FIFRA again in 1978 to extend funding and clarify many provisions.

FIFRA makes EPA responsible for administering a nationwide pesticide control program and regulating the manufacture, distribution, and use of pesticides. States with EPA approval can certify and train pesticide users and enforce the provisions of the act.

EPA classifies pesticides, based on their potential harm to the environment, for either restricted or general use. Only trained and certified applicators may apply pesticides designated for restricted use. EPA funds those States administering applicator certification and training programs.

With EPA approval, States may also be delegated primary enforcement responsibility and receive an EPA grant to enforce FIFRA provisions. EPA retains that responsibility in the other States. Only Colorado and Nebraska opted not to participate in the FIFRA applicator certification and training program. Officials in these two States cited philosophical differences with the Federal legislation and resistance to federally mandated programs as reasons for not participating. For the enforcement of FIFRA provisions, EPA expects to negotiate at least 43 State cooperative agreements in fiscal year 1980.

The Resource Conservation and Recovery Act (RCRA)

In 1976 the Congress passed the Resource Conservation and Recovery Act (42 U.S.C. 6901) to protect health and the environment and conserve valuable material and energy resources. This act mandates a national program to control hazardous wastes from their generation point to ultimate disposal and sets forth a program to manage nonhazardous solid wastes. RCRA was intended to be implemented primarily by the States.

Under subtitle C (hazardous wastes), EPA must establish a national regulatory program to control hazardous wastes, which the Federal Government will operate and enforce only when EPA does not approve the State program. "Cradle to grave" hazardous waste control is to be achieved by (1) establishing Federal standards for hazardous waste generators; transporters; and treatment, storage and disposal facilities, (2) using a nationwide manifest system to track hazardous waste movement, (3) issuing permits for new and existing treatment, storage, and disposal facilities, and (4) enforcing these Federal requirements. States can receive financial and technical aid to develop hazardous waste programs meeting EPA requirements. Seven States are unsure if they will administer a hazardous waste program, and one State--Alaska--has stated it does not intend to administer such a program because it would require too much State effort for too little gain.

Subtitle D (nonhazardous solid wastes) encourages the States to develop nonhazardous waste management programs but does not mandate a Federal program when States do not wish to operate their own. EPA provides grants to assist States in developing comprehensive solid waste management plans which provide for the closure or upgrading of existing open dumps, prohibit the establishment of new open dumps, and provide environmentally sound solid waste disposal or recovery alternatives. The act also requires a disposal site inventory, which the States will conduct, to determine whether these sites should be classified as open dumps or sanitary landfills. EPA is planning a 5-year phaseout of the Federal role under subtitle D, beginning in 1980. Most States plan to administer the nonhazardous waste program.

The Safe Drinking Water Act (SDWA)

In December 1974 the Congress passed the Safe Drinking Water Act (42 U.S.C. 300(f), supp. V, 1976) to ensure that public water supply systems throughout the Nation meet minimum national health standards. This act was the first national committment to safeguard public drinking water supplies. Before the act, Federal authority to regulate drinking water quality had been restricted to water provided on interstate carriers or sold interstate.

EPA must establish national drinking water standards, and the States are expected to adopt and enforce these standards. The act intended the States to take the lead implementation role by assuming enforcement responsibility or "primacy" over the Nation's estimated 250,000 public water systems. EPA enforces the act in those States not assuming primacy.

To obtain primacy, a State must establish a drinking water program approved by EPA. To help the States develop and implement primacy programs, the act authorizes EPA to award grants not exceeding 75 percent of the States' total program costs. The 1977 amendments extended the deadline for State primacy assumption to October 1, 1979. At the time of our review, all but six States were implementing the act, but EPA expects that all States will assume primacy by the end of 1980. The reasons those six States cited for not implementing the Federal program were State budgetary limitations, opposition to regulatory emphasis of the Federal program, inflexible regulatory approach, inadequate Federal funding, lack of public support, and reluctance to replace the existing State program with a Federal program.

Another major provision of the act addresses the protection of underground water sources by controlling subsurface fluids injection. The 22 States EPA initially designated as needing an underground injection control program may undertake primary enforcement responsibility for this program with EPA approval.

SCOPE OF REVIEW

This report identifies the major obstacles States face on a national basis when implementing programs under five Federal environmental laws--the Clean Air Act; the Clean Water Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the Resource Conservation and Recovery Act; and the Safe Drinking Water Act. This report addresses the impact those obstacles have on the EPA-State partnership envisioned to carry out those laws.

Based on interviews with representatives of the Council of State Governments and the Advisory Commission on Intergovernmental Relations and with environmental officials in Connecticut, Georgia, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, we designed and sent individual program questionnaires 1/ to State lead environmental agency administrators and the State directors of air pollution, water pollution, drinking water, pesticides, and solid waste programs. We used nationwide questionnaires to ensure that the problems identified were national in scope and not unique to the States contacted.

The overall questionnaire response rate was 93 percent, which ranged from 90 to 100 percent, depending on the program, as shown in table 2. At the time of our review, two States (Colorado and Nebraska) were not implementing FIFRA and six States (Indiana, Oregon, Pennsylvania, South Dakota, Utah, and Wyoming) were not implementing SDWA. In those cases, we excluded any questionnaire responses received. Moreover, by our definition of lead environmental agency--the single State agency responsible for implementing at least the Clean Air and Clean Water Acts--five States (Maryland, New Hampshire, Texas, Virginia, and West Virginia) did not have such an agency.

1/A compilation of selected questionnaire responses is being issued under separate cover.

Table 2

State Response Rate to GAO Questionnaires

	Lead agency	CAA	CWA	FIFRA	RCRA	SDWA
Total States	50	50	50	50	50	50
Less:						
States with no lead agency	5					
States not implementing Federal act				2		6
Universe for questionnaire	45	50	50	48	50	44
Questionnaires returned	45	45	45	46	46	40
Response rate (percent)	100	90	90	96	92	91

We asked State environmental officials responding to the questionnaires to identify specific examples of the obstacles cited. We verified those specific examples with the appropriate records to ensure that the obstacles did in fact exist. We excluded any examples provided which we could not substantiate. While some obstacles at the State level--State leadership, organizational conflicts, and obtaining enabling legislation--were valid for individual States, they were not problems on a national scale and are not discussed in this report. Where disputes existed between the States and EPA, we obtained the viewpoints of EPA officials.

We also discussed program implementation problems with representatives of the various organizations that State program directors identified as best representing their interests and viewpoints to the Congress and EPA. These included the Conference of State Sanitary Engineers (CSSE), Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), Association of American Pesticide Control Officials (AAPCO), the State and Territorial Air Pollution Program Administrators, and the National Governors Association (NGA).

CHAPTER 2

EPA-STATE RELATIONSHIPS ARE SEVERELY STRAINED

The States, primarily responsible for carrying out Federal environmental legislation, overwhelmingly identified Federal requirements--legislative, regulatory, and administrative--and the uncertainties of Federal funding as the greatest obstacles to managing their programs. Because of these obstacles and the States' perception that they have been largely ignored in Federal decisions affecting their programs, the EPA-State partnership envisioned by the Congress and so important to the effective implementation of Federal environmental programs has not fully materialized.

Discussed below are State environmental officials' perceptions of the overall obstacles to managing their programs and their relationship with their partner, EPA. Obstacles created by Federal requirements are discussed in chapter 3, and funding and staffing constraints are discussed in chapter 4.

STATES CRITICAL OF EPA HEADQUARTERS

State program directors and lead environmental agency administrators have a far better relationship with EPA regional offices overall than with EPA headquarters. They generally believe that regional staffs at least understand the problems they face and try to assist them in meeting environmental objectives but that EPA headquarters staff does not. They characterize headquarters officials as inexperienced, living in fantasy worlds, and having no conception of the implications of the decisions they make which directly affect State programs. To the States, EPA headquarters is the root cause of the problems they face in implementing Federal environmental programs.

State officials provided many examples of EPA actions or inactions that frustrated them and detracted from effective program implementation. Some of their examples taken alone do not appear on the surface to be of major significance; however, as a composite, they paint a picture of distrust, frustration, and annoyance with the Federal structure.

State officials maintain that the so-called EPA-State partnership is a myth. One lead agency administrator said that EPA delegates responsibilities to the State but does not delegate the authority for the programs to the State.

He referred to this as "relegation" rather than "delegation." Another official told us that EPA views the air pollution program as its own, with the State acting in the role of an EPA agent.

State officials pointed out that EPA maintains virtually total control of its programs through regulations, guidelines, grant documents, duplicative reviews, and paperwork requirements. Some State officials believe that EPA maintains this control because it distrusts State personnel. For example, one State program director said that "EPA Headquarters has continually assumed the States are incapable of developing or administering effective environmental programs." Another official wrote that EPA has "an apparent mistrust of State and local agencies. They exhibit this by extreme attention to overview and review processes."

State perceptions that the EPA-State partnership is nonexistent and that EPA's desire to control State programs stems from mistrust are not new. In December 1975 a Decentralization Task Force formed by an EPA assistant administrator reported:

> "Of even more concern to State officials is the deeply felt belief that the joint State-EPA partnership, which is often cited in EPA program documents, is little more than a slogan. The use of the term, partnership, by EPA is seen by many States to be somewhat self-serving since EPA defines the terms of the 'partnership,' and appears to reserve to itself the role of 'senior partner.' Several State officials referred to program delegation as a system in which, "the States do all the work and EPA retains the authority and takes the credit."

In our report entitled "16 Air and Water Pollution Issues Facing the Nation" (CED-78-148B, Oct. 11, 1978), we reported that according to State officials, EPA "believes States are there solely to implement the Federal program and are incapable of administering on their own."

The overall impact of this deteriorating relationship on State programs was described by one lead agency administrator:

> "The greatest negative impact on our program is the deadening effect that Federal interference and influence has upon the spirit and morale of the people who are operating in the programs. Once a program becomes 'federalized,' the morale, efficiency, and quality of output is noticeably diminished. This accounts for the decreased emphasis on environmental issues in our State."

Table 3 shows that over 82 percent of the State program directors described their relationship with EPA regional staffs as either very good or good. The typical reasons for good relations were described by the director of Georgia's Pesticide Division:

> "We have made every effort possible to cooperate with the Region IV office, we have sought their input into our actions to secure concurrence. They have shown an understanding of our problems and have made every possible effort to assist us when possible. When we have disagreed on policy or procedures, we have done so with dignity. Accordingly, our mutual respect has certainly contributed to the solution of our problems under FIFRA."

Others pointed to the professional competence and reasonableness of regional staffs. Overall, the key ingredients were clearly good communication and interaction between the States and regional people who have made a concerted effort to jointly pursue environmental goals.

Table 3

State Program Directors' Responses: Overall, How Would You Characterize Your Relationship with EPA Regional Staff?

Program	State responses	Very good	Good	Neither good nor bad	Poor	Very poor
		(percent)				
CAA	45	15.6	53.3	20.0	11.1	0.0
CWA	45	11.1	57.8	26.7	2.2	2.2
FIFRA	46	69.6	30.4	0.0	0.0	0.0
RCRA	46	43.5	43.5	8.7	2.2	2.2
SDWA	40	55.0	32.5	5.0	7.5	0.0
Total	222	38.7	43.7	12.2	4.5	0.9

Where a cooperative atmosphere did not exist, State program directors were very critical of regional staff. For example, the Director of a State water pollution program wrote: "We have fewer people doing the work than they have watching it, but we can't get help when we ask for it. They are too busy doing other things." A water pollution control director said that the regional staff's search for reasons to deny rather than assist is a constant problem. Another recognized that the problem was not so much with the regional people as it was with the headquarters directives they had to follow.

While most States are satisfied with their relationship with the EPA regional offices, they are frustrated with EPA headquarters. As shown in table 4, State lead environmental agency administrators believe EPA headquarters has substantially less understanding of the obstacles States face in implementing environmental programs than do the EPA regions. A total of 73 percent of State program officials believe headquarters has a less-than-moderate understanding of the problems they face, and 66.1 percent believe this lack of understanding negatively affects their programs. (See tables 5 and 6.)

Table 4

Administrator, Lead Environmental Agency Responses: Do You Feel That EPA Understands the Problems You Face in Administering Your Program? (Note a)

	Regions	Headquarters
	(percent)	
Definitely yes	13.3	0.0
Probably yes	42.2	8.9
Uncertain	11.1	13.3
Probably no	22.2	35.6
Definitely no	11.1	42.2

a/Total responses: 45.

Table 5

State Program Directors' Responses: To What Extent, If at All, Do You Feel the EPA Headquarters Staff Understands the Problems You Face as a State Program Director in Administering Your Program?

Program	State responses	Very large extent	Substantial extent	Moderate extent	Some extent	Little or no extent
		(percent)				
CAA	45	0.0	4.4	8.9	37.8	48.9
CWA	45	0.0	4.4	11.1	33.3	51.1
FIFRA	46	6.5	8.7	28.3	41.3	15.2
RCRA	46	0.0	6.5	23.9	41.3	28.3
SDWA	40	5.0	12.5	15.0	22.5	45.0
Total	222	2.3	7.2	17.6	35.6	37.4

Note: Percentages do not equal 100 percent due to rounding.

Table 6

State Program Directors' Responses: Overall, How Does the Current Level of EPA Headquarters Staff Understanding of Your Problems Impact on the Effectiveness of Your Program?

Program	State responses	Significant positive impact	Positive impact	Little or no impact	Negative impact	Significant negative impact
		(percent)				
CAA	45	0.0	11.1	13.3	53.5	22.2
CWA	a/44	0.0	6.8	13.6	45.5	34.1
FIFRA	46	4.3	10.9	41.3	32.6	10.9
RCRA	46	0.0	13.0	17.4	56.5	13.0
SDWA	40	12.5	10.0	15.0	40.0	22.5
Total	221	3.2	10.4	20.4	45.7	20.4

a/One other State replied that the impact on effectiveness varies.
Note: Percentages do not equal 100 percent due to rounding.

The comments of one State water pollution control program director were typical of many others.

> "The States and EPA Regions will continue to experience great difficulty in administering CWA programs until EPA Headquarters gets people in top level management positions who have extensive experience in pollution control. Current EPA regulations are basically written by young lawyers and inexperienced personnel who have no conception of the impacts of what is being put in print."

The gist of EPA headquarters' image problem is the States' perception that EPA headquarters officials, who oversee the various programs, simply have no understanding of the real workings of pollution control programs, whereas regional officials do. As one State official wrote in describing why he classified his relationship with the EPA region as very good, "unlike many EPA Headquarters people they live in the real world." Another State official wrote:

> "I feel that a strong regional presence with authority to make decisions is preferable to a situation where

> all decisions come from Washington. Regional people do have a better knowledge of the problems facing us in State government than do headquarters."

STATE DISCONTENT STEMS LARGELY FROM PERCEPTIONS OF EXCESSIVE EPA CONTROL

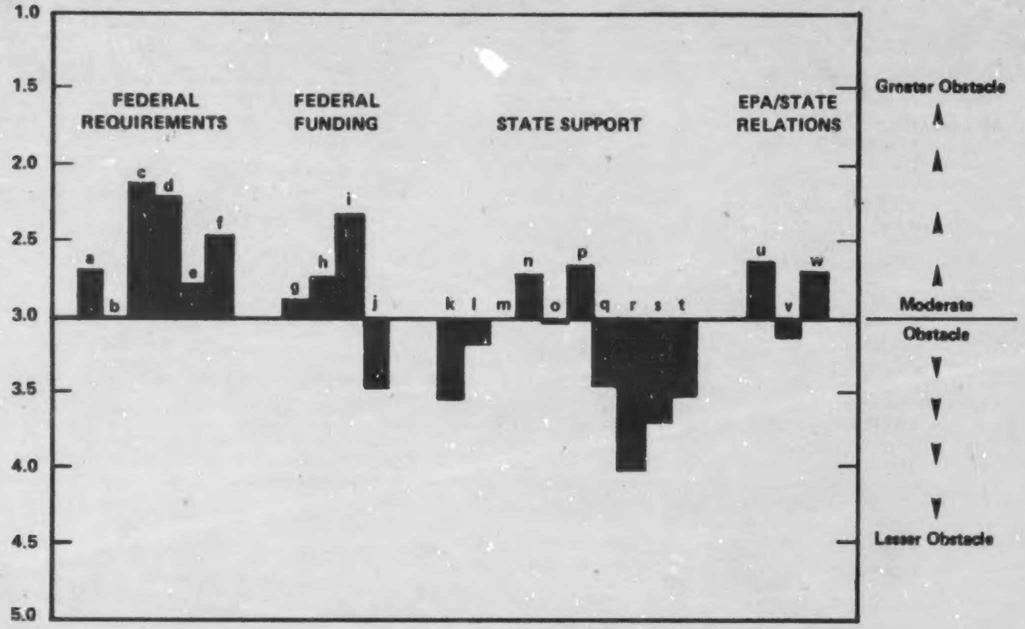
The causes of State discontent with EPA headquarters varied among State officials, but the States' perception of excessive control over their programs is certainly the major contributing factor. State officials believe that the Federal Government should provide national direction to implement programs without undue Federal control, interference, and duplication. Their belief, however, contrasts sharply with the way they perceive the programs are actually operating. State environmental officials said that their programs are hampered by slow and erratic Federal funding and voluminous, untimely, unclear, unrealistic, and inflexible Federal regulations and administrative requirements.

As shown in figure 1, State program directors identifi the most significant program management obstacles across all programs as the delayed issuance and inflexibility of EPA regulations and guidelines, the uncertainty of Federal funding, and the extent of controls EPA imposes on the Stat The only obstacle of any consequence identified at the State level were staffing constraints. Table 7 illustrates that the lead environmental agency administrators, with few exceptions, ranked the obstacles to effective program management in much the same way as did a consolidation of all program directors (shown in the table as national program ranking.)

FIGURE I

CONSOLIDATED STATE PROGRAM DIRECTORS' RESPONSES

OBSTACLES TO MANAGING ENVIRONMENTAL PROGRAMS



- **FEDERAL REQUIREMENTS**
  - a. Deadlines imposed by Federal legislation
  - b. Availability of technology to support Federal legislation
  - c. Time it takes to issue EPA regulations and guidelines
  - d. Amount of flexibility in current EPA regulations and guidelines
  - e. Clarity of current EPA regulations and guidelines
  - f. Extent of controls imposed on the State by EPA

- **FEDERAL FUNDING**
  - g. Amount of Federal funding to support program costs
  - h. Timing of Federal funding to support program admin. costs
  - i. Knowledge of future Federal funds to support State program costs
  - j. Federal funds for municipalities to meet Federal environmental requirements

- **STATE SUPPORT**
  - k. Obtaining State enabling legislation
  - l. Existing State policies to limit all program growth
  - m. Amount of State funding to support program costs
  - n. Number of staff in State program
  - o. Losses of experienced personnel
  - p. Ability to fill personnel vacancies
  - q. Current training programs available for State personnel
  - r. Split responsibility for environmental programs within the State
  - s. Level of public support for environmental programs
  - t. Level of State political support for environmental programs

- **EPA–STATE RELATIONSHIPS**
  - u. Timing of EPA answers to questions/regulation interpretations
  - v. Quality of EPA answers to questions/regulation interpretations
  - w. Philosophical differences on program priorities and objectives

Table 7

Ranking of Obstacles to Managing State Environmental Programs

Obstacles	Lead agency ranking	National program ranking	Ranking by individual programs				
			CAA	CWA	FIFRA	RCRA	SDWA
Federal requirements:							
Deadlines imposed by Federal legislation	3	6	1	8	12	15	7
Availability of technology to support Federal legislation	14	13	9	15	10	19	11
Time it takes to issue EPA regulations and guidelines	1	1	2	2	1	1	16
Amount of flexibility in current EPA regulations and guidelines	2	2	3	1	5	3	1
Clarity of current EPA regulations and guidelines	9	11	11	7	6	10	13
Extent of controls imposed on the State by EPA	4	4	7	3	7	8	2
Federal funding:							
Amount of Federal funding to support program costs	12	12	13	10	14	4	17
Timing of Federal funding to support program administration costs	10	9	17	6	8	7	5
Knowledge of future Federal funds to support State program costs	5	3	14	4	2	2	4
Federal funds for municipalities to meet Federal environmental requirements	18	19	22	17	23	5	15
State support:							
Obtaining State enabling legislation	20	21	15	21	20	16	22
Existing State policies to limit all program growth	17	17	18	19	15	17	8
Amount of State funding to support program costs	15	14	16	14	11	11	10
Number of staff in State program	11	10	6	13	16	6	6
Losses of experienced personnel	7	15	8	12	19	18	12
Ability to fill personnel vacancies	6	7	4	11	13	9	3
Current training programs available for State personnel	19	16	20	18	22	13	20
Split responsibility for environmental programs within the State	23	23	23	23	21	23	23
Level of public support for environmental programs	22	22	21	22	17	21	21
Level of State political support for environmental programs	21	20	19	20	18	22	19
EPA-State relationships:							
Timing of EPA answers to questions/regulation interpretations	8	5	5	5	3	14	14
Quality of EPA answers to questions/regulation interpretations	16	16	12	16	9	20	18
Philosophical differences on program priorities and objectives	13	8	10	9	4	12	9

STATES BELIEVE THEY HAVE LITTLE INPUT INTO THE EPA DECISIONMAKING PROCESS

Most troublesome to the States is that although they are responsible for implementing Federal environmental programs, they overwhelmingly believe they have little input into the EPA decisionmaking process. Only 5.7 percent of State program directors and lead agency administrators believe their viewpoints are given substantial consideration in the EPA regulation-making process, and only 3.4 percent believe their viewpoints are substantially considered in the EPA policymaking process. (See tables 8 and 9.)

While States usually have an opportunity to comment on EPA-proposed regulations, many State officials believe that EPA headquarters ignores their comments. Further, States are often overwhelmed by the volume of EPA-generated regulations and simply do not have the time to comment either because the drafts were received late or because they lack the staff to review them.

Table 8

State Responses: To What Extent, If at All, Do You Feel Your Viewpoint Is Given Adequate Consideration in The EPA Regulation-making Process?

State program	Responses	Very great extent	Great extent	Moderate extent	Some extent	Little or no extent
		(percent)				
Lead agency	45	0.0	2.2	20.0	26.7	51.1
CAA	45	0.0	2.2	15.6	37.8	44.4
CWA	45	0.0	2.2	11.1	26.7	60.0
FIFRA	46	2.2	6.5	17.4	45.7	28.3
RCRA	45	0.0	11.1	20.0	42.2	26.7
SDWA	40	0.0	7.5	20.0	25.0	47.5
Total	266	0.4	5.3	17.3	34.2	42.9

Note: Percentages do not equal 100 percent due to rounding.

Table 9

State Responses: To What Extent, If at All, Do You Feel Your Viewpoint Is Given Adequate Consideration in The EPA Policymaking Process?

State program	Responses	Very great extent	Great extent	Moderate extent	Some extent	Little or no extent
		(percent)				
Lead agency	45	0.0	4.4	13.3	26.7	55.6
CAA	45	0.0	2.2	11.1	24.4	62.2
CWA	45	0.0	2.2	8.9	15.6	73.3
FIFRA	46	2.2	2.2	15.2	54.3	26.1
RCRA	45	0.0	4.4	17.8	40.0	37.8
SDWA	40	0.0	2.5	27.5	22.5	47.5
Totals	266	0.4	3.0	15.4	30.8	50.4

Note: Percentages do not equal 100 percent due to rounding.

Regulations do not reflect problems of program implementation

State officials believe that EPA regulations and guidelines are unrealistic and do not consider the practicalities of implementation. States cite increased workloads imposed by new regulations while staff levels are fixed and inadequate leadtimes are given to get programs established. Reports issued by the National Academy of Sciences (NAS), the Council of State Governments, and the Association of State and Interstate Water Pollution Control Administrators support these contentions.

The Council of State Governments, in a November 1978 report entitled "Pesticide Applicator Certification and Training: The Impact of Federal Funding Termination," stated that

> "many States feel that the Federal Government, in promulgating regulations, is unaware of the problems associated with actual implementation, particularly in the administration of environmental controls."

In its 1977 report on EPA's decisionmaking, NAS points out that:

--EPA's decisionmaking practices do not consider the practicality of implementation.

- --EPA regional offices and State and local governments believe that EPA headquarters is "too often oblivious to the practical difficulties of implementing EPA regulations."

- --EPA regional and State officials "are critical of EPA Headquarters for writing regulations that require more field resources than are available."

An example of what NAS was discussing was recently highlighted by ASIWPCA. Discussing a pretreatment program for municipal wastewater treatment plants, funded under the Construction Grant program, ASIWPCA reported that few States have the resources to implement the program as required by EPA regulations. In its May 1979 report, "Recommendations for an Improved National Water Quality Program," ASIWPCA concluded that the "program must be designed for management utilizing likely available (existing and future) resources * * * "and warned:

> "Failure to alter the program will result in (1) withdrawal of the NPDES authority from some States (which may not be a viable option since USEPA does not have the resources to administer the program) or (2) a poorly run program by a number of States."

Several State officials described the problems they face when program requirements are imposed without any apparent consideration of the implementing problems at the State level. One State lead agency administrator told us that the States need at least 3 years leadtime to implement major cooperative State-Federal programs. With the time needed to plan new programs; obtain enabling legislation and staffing; and sell the program to the Governor, the legislature, and the public, he pointed out that States are never allowed enough time to implement a new program before they are hit with new legislation, regulations, and requirements, all of which require a new start. As he put it, the States are constantly playing catchup. A water pollution program director said that because of differences in fiscal years, his State is about 1 to 1-1/2 years behind Federal requirements. His State simply cannot beef up its staff to handle new requirements, even if EPA provides the funds.

The State chairman of a water pollution control program commented on manpower constraints:

> "* * * EPA in revising its numerous regulations subsequent to the passage of the CWA has with each

> version, imposed new program requirements (and manpower requirements) on the States. While some of these new requirements might be desirable if we had unlimited resources, many add little or nothing to the overall effectiveness of the water quality effort. With the limited manpower resources available within the States, there is no way these new requirements can be satisfied. Yet, the regulations do not provide any flexibility. We must--but we can't."

The director of a State solid waste program submitted his agency's consolidated comments to EPA on proposed hazardous waste regulations and discussed the need to recognize implementation problems. Specifically, he wrote:

> "During our work with the EPA and the NGA, our comments were based on some ten years of experience dealing with private enterprise and municipalities. We have stressed the real world political problems in dealing with elected officials and the general public within the restraints of State laws regarding public hearings and permitting requirements. It is imperative that the EPA in its promulgation of regulations recognize the grass roots implementation problems by providing regulatory flexibility which allows States to continue on-going safe and effective programs. Although some flexibility has been added in the notes of the latest proposed regulations, we do not see sufficient flexibility nor do we see an indication that the EPA is willing to place trust in the professional competency of the States."

State input given lipservice

Even where State input into regulation development, reports, or studies is mandated by legislation, States may still not be actively involved. One such case was the preparation of a report on ultra-low-volume (ULV) uses of pesticides required by the 1978 FIFRA amendments.

FIFRA, as amended in 1972 and 1975, made it illegal "to use any registered pesticide in a manner inconsistent with its labeling." The 1978 FIFRA amendments provided some clarification of the term and required EPA, in cooperation with the Secretary of Agriculture and after consultation with appropriate State officials, to study methods of applying pesticides, including ULV methods.

The amendments required EPA to report on this study no later than March 31, 1979, with recommendations to the House and Senate Agricultural Committees for changes in existing law on the use of a pesticide "in a manner inconsistent with its labeling." The act further provided that EPA may issue an advisory opinion resulting from the study, which will have the effect of a regulation. If EPA did not issue a regulation or advisory opinion by March 31, 1979, pesticides could be applied in a more concentrated form than specified on the label. On March 31, 1979, EPA submitted the required report and on July 10, 1979, published an advisory opinion which makes pesticide use illegal at any dilution less (or more highly concentrated) than that specified on the label.

Although the FIFRA amendments mandated State involvement in the ULV report, State input was extremely limited. State officials were not involved in the development of the report; rather, the study group consisted of six EPA staff members who consulted with three Department of Agriculture officials. States were given only a last minute opportunity to review the draft report and make comments. The chairman of the enforcement subcommittee of a State advisory group received a copy of the draft report on February 28, 1979, for distribution to other committee members. Comments were due on March 8, 1979--10 days later.

The chairman was involved in a pesticide emergency in his State and did not have time to provide written comments. He did provide limited oral comments, however, based on input received from two State pesticide control officials who were also subcommittee members. He had sent copies to them for review and comment, but these State officials had less than a week to provide written comments. One committee member did not respond because of insufficient time to adequately review the report. The other official prefaced his one page of comments with the following statement: "Because of the short time provided for me to study this report in detail, I will limit my comments to the more important considerations."

The EPA project officer on the ULV study told us that the States were not involved in writing the report because EPA believed preparation of the report was its responsibility. State officials, however, were upset with the lack of input they had into this report, which directly affects their programs. The immediate past president of the Association of American Pesticides Control Officials, an association of State pesticides program directors, wrote us that "I do not personally feel that a last minute opportunity to review the report before it is sent to Congress is an opportunity to consult with the agency." He also wrote to the chairman, House Committee on Agriculture, stating that "it appears to be a last minute attempt to inform the states in order to be able to say that the states had been contacted."

In addition to the lack of State input into the ULV report, the States had absolutely no input into the advisory opinion of July 10, 1979, which became a regulation for the States to follow. One State official said that he phoned the EPA project officer to obtain the advisory opinion so that he could comment on it. The project officer agreed to send the opinion to him for comment, but he never received the draft.

State input has worked

When States have been directly involved in the EPA decisionmaking process, their input has been beneficial. State representatives were extensively involved in developing some SDWA and FIFRA regulations and guidelines with good results from the State perspective.

Safe drinking water program

The chairman, Water Supply Committee, Conference of State Sanitary Engineers, testifying on the implementation of the SDWA before the House Subcommittee on Public Health and Environment, September 25, 1978, said; "This may well be the most effective Federal-State coordination on implementing a Federal environmental act that we have encountered." He went on to say:

> "An extremely encouraging aspect of the Safe Drinking Water Act is the fine State-Federal liaison that has been a major consideration in the implementation of the Act since its passage. With the exception of the organics regulations that are now under fire by so many people, there has been excellent input by the States into regulations and guidelines prior to their publication for public hearings."

Commenting on situations where State officials had no input, a State water supply official wrote:

> "The two obvious examples of State-EPA non-cooperation I can cite are the pending regulations on organics in drinking water and the current proposal for a State-EPA agreement. In each case, the problem resulted in things being dropped on the States with too little communication, understanding, and support. Such issues can be dealt with openly and factually but only if there is a mutual spirit of trust and cooperation. This was absent in these two instances * * *."

The NAS 1977 report on decisionmaking in EPA states:

> "The practice of including State officials on working groups was significant in the development and implementation of safe drinking water regulations. This measure has had two virtues; it has acquainted headquarters officials with potential implementation pitfalls and has also improved prospects for cooperation by State programs. Such practice should be continued when EPA is developing regulations with significant impact on State resources and when EPA is given unambiguous legislative guidance as to minimum program requirements."

Pesticides program

The president of AAPCO said that a State task force worked extensively with EPA in developing certification regulations. The success of that relationship is evidenced by the fact that only one State pesticide official complained to us about these regulations. AAPCO has also been extensivly involved with EPA in developing and modifying enforcement guidelines, used in State-EPA cooperative enforcement agreements. The president of AAPCO concluded that this procedure works well; not everyone agrees totally with the guidelines, but at least States have input. For example, only 2 of the 32 States with cooperative enforcement agreements told us that they were dissatisfied with the agreement.

EPA ACTIONS HURT RELATIONSHIPS WITH STATES

Actions taken by EPA can further hurt deteriorating EPA-State relationships when the States find their program efforts being frustrated. Even where EPA takes corrective actions after initially failing to coordinate with State agencies, the damage to the basic relationship has been done. From such experiences, the States have perceived that they are not equal partners with EPA, and they are skeptical about new environmental initiatives proposed by EPA.

Funding private contractors for technical assistance

In administering CAA, EPA traditionally has used private contractors funded with State program grant money to perform various technical and resource-intensive services for the States. Although the practice of using private contractors is not new, some State officials only recently realized that contractors were funded with program grant money. This practice has angered State program officials, even though they were not overwhelmingly dissatisfied with the results of contractors' work.

As late as February 1979, the fact that EPA-issued contracts were being funded with program grant money was not known to all State air program directors. One of these directors said that EPA had always represented contracts as "A gift from heaven." Another State official told us that organizations representing State air program have worked extremely hard to obtain increased air program funding, and it was upsetting that after they had obtained that funding, EPA used part of it to award contracts. He stated that some of the contracts are research, which more appropriately should be funded from the EPA research budget.

Using private contractors for oversight inspection

In fiscal year 1979, the Office of Management and Budget replaced 30 EPA enforcement positions with $2.1 million to be used by private contractors to inspect sources States reported as complying with air pollution control requirements. These overview inspections are intended to assure the reliability of State-reported compliance data. The use of contractors for this purpose, however, threatens to further damage State-EPA relationships.

The use of private contractors to conduct overview inspections has angered a number of State air pollution control officials. The director of Massachusetts' air program notified EPA region I by letter that his department

> "* * * has determined that the consultant under contract to EPA will receive limited cooperation in the procurement of background information for such inspections. This cooperation will consist of making files available to the contractor at the Department's convenience. Department personnel will not be required to assist the contractor in any other way."

The director objected to the use of contractors because of potential conflict of interest, qualifications of contractor personnel, possible reluctance of industry to allow voluntary field inspections, and the actual loss of State personnel to private contractors. On the latter point, he wrote:

> "The Department has recently lost several well qualified engineers to private contractors who were performing work for government agencies. Although

> the Department does not object to qualified personnel bettering their salaries by going to work for private contractors, it does not appear to be in the best interest of taxpayers to pay the 100 percent overhead cost charged by contractors to repeat work already being done by government agencies. Also, contractor use becomes self-perpetuating and self-enhancing since State agencies become less capable of doing the job as more qualified personnel are hired away."

A New Jersey official wrote to the regional administrator of EPA region II (New York) and complained of the strain this approach would put on State resources. Specifically, he stated:

> "We view enforcement as a government agency responsibility, regardless of the level of government. As such, we strongly oppose delegation to a non-governmental entity. New Jersey has long had one of the most progressive, effective, and efficient enforcement programs in the nation. If EPA can justify the need for enforcement support, then available resources should be allocated to the appropriate state or local agencies which already have the requisite knowledge and experience rather than to a private, profit-oriented enterprise.
>
> "Generally, we have found that almost any contractor's employees working in the air pollution control area must be trained in our rules, regulations, methods, and procedures. This means that experienced personnel who would otherwise be performing valuable functions for our Department must be diverted to such training. More importantly, experience in other regions has shown that after a contract has been awarded, the contractor begins a 'head hunting' expedition. Typically, he raids the agency * * * he is working with, luring away qualified employees. While this benefits the contractor, it severely hinders the activity of the agency since new employees must then be hired and trained."

* * * * *

> "It is likely that contractors, which generally do not have enforcement backgrounds, will not be able to conduct an effective enforcement effort. For example, in cooperation with your office, Region III and the States of Pennsylvania and Delaware, we attempted to utilize outside contractors for sulfur-in-fuel compliance inspections. It is my

> impression, from the reports I've received concerning that contract, that little or none of the material produced will be useful as evidence in an enforcement action. It is clear that any expanded reliance on contractors would result in similar problems."

In a letter to his region, the chief of Rhode Island's air program said that the use of contractors for overview inspections is "a serious mistake." He reasoned that inspections of industry should be done by government employees, because the use of contractors is not economical and such inspections are a duplication of effort. He concluded, "Our files are open to anyone, as you are aware, but I do not lend my full support to this sort of activity."

The chief of Nevada's air program wrote to EPA region IX (San Francisco) objecting to the use of contractors for many of the reasons discussed above. He said that he would continue to cooperate with EPA and the private contractor; however, he insisted "* * * that when a consultant under contract to you conducts inspections within the State they will do so at the State's convenience."

Emergency pesticide exemptions

In our report entitled "Special Pesticide Registration by the Environmental Protection Agency Should Be Improved" (CED-78-9, Jan. 9, 1978), we discussed several examples of poor coordination. Under FIFRA, EPA may grant exemptions to use suspended, canceled, or unregistered pesticides in emergency situations. Although EPA regulations provided that exemptions could be granted only to Governors or their designees, we identified seven instances in which EPA granted emergency exemptions in 1974 and 1975 without notifying the appropriate State officials.

Our report stated:

> "Although we did not note any instances where specific exemptions were granted to unauthorized organizations in 1976, this situation could recur because EPA's procedures have not been changed. Also, the exclusion of responsible State agencies from participation in the decisionmaking and monitoring of exemptions is not consistent with EPA's policy of obtaining greater State participation in its pesticide programs. Alienation of State agencies, as occurred in South Dakota and Minnesota, could adversely affect EPA State cooperation in all pesticide regulatory activities."

EPA responded that it had since taken measures to ensure that the appropriate State agency was notified. Still, the damage to EPA-State relations had been done.

Untimely publication of Louisiana's revised SIP

In compliance with an EPA requirement, Louisiana submitted a revised SIP on December 9, 1977, which proposed hydrocarbon regulations and a photochemical oxidant control strategy. Over a year later on March 2, 1979, without notifying the State, EPA published the SIP as a proposed rulemaking in the Federal Register. The proposed rulemaking disapproved some of Louisiana's proposed regulations, thereby putting a number of sources into noncompliance when the rulemaking became final.

This EPA action infuriated State officials for a number of reasons. For example, by disapproving certain strategies, the EPA action changed the intent and meaning of the regulations drawn up by the State. As such, Louisiana could not enforce them as proposed. Further, EPA had the strategies in hand for over a year and, according to State officials, never objected to them. Compounding the State's anger at not being told of the changes before publication was the fact that the region published the changed strategies knowing the State would soon submit a revised SIP to comply with the 1977 CAA amendments, which would supercede the December 1977 strategies. At the State's request, the EPA region did withdraw the proposed regulation pending submission of Louisiana's SIP, but the harm to the State-EPA region relationship had already been done.

Past experiences can hurt new proposals

For several years, EPA was considering a legislative proposal to authorize a consolidation of categorical grants for environmental programs. On May 23, 1979, a bill was filed (H.R. 4213) called the "Integrated Environmental Assistance Act of 1979." Under this proposed legislation, States approved by EPA could receive one consolidated grant for two or more programs in lieu of the traditional categorical grant. States could transfer funds among the programs covered, provided that funding for any one program not be reduced below 80 percent of the Federal funds allocated in that year. As of May 1980, hearings have been held by the House Subcommittee on Health and the Environment of the Committee on Interstate and Foreign Commerce, but no further action has been taken on the bill.

When we asked lead environmental agency administrators about this proposed legislation, 56 percent favored the approach, 13 percent were unsure, and 31 percent disagreed. The greatest overall concerns were not so much the concept as they were EPA's implementation and the potential internal struggles at the State level over program funding allocations. Over one-third of those we spoke with who disagreed, did so because they were fearful of the way EPA would implement the program. These officials feared EPA would use the consolidated grant as a means to force all programs covered by the grant to fully comply with EPA requirements and policies. Even one administrator favoring the approach was very concerned about its actual implementation.

CHAPTER 3

FEDERAL REQUIREMENTS--

A BITTER PILL FOR STATES TO SWALLOW

Once a Federal environmental law is passed, the States must wait for EPA to issue regulations and guidelines before they can adopt needed enabling legislation and otherwise work toward the goals of the act. EPA, however, has rarely met the legislative deadlines for issuing regulations, thus constricting the time available to the States for program implementation and increasing the risk that other legislated milestones will not be met. Those legislated time constraints do not always take into account EPA's lengthy regulation development process. Once regulations are issued, the unique characteristics of individual States are submerged in favor of national consistency, and States must then force their programs to fit a national mold. After regulations are in effect, State officials believe their ability to perform is further constrained by various EPA controls imposed on their programs.

LATE REGULATIONS DISRUPT STATE PROGRAMS

Much criticism has been leveled at EPA for delays in promulgating regulations. Nearly all environmental programs have been affected by these delays to some extent. As a result, State program implementation has been erratic, confused, and slow; legislative deadlines have been missed and extended; and the credibility of some State programs has been hurt. However, EPA cannot possibly meet some of its legislative deadlines for developing major regulations.

The States, which are basically responsible for implementing the acts, are reluctant to react to draft or proposed EPA regulations and guidelines which could be-and have been--changed substantially in final form. On the other hand, if the issuance of final EPA regulations is delayed--as is often the case--the time periods available to the States to obtain necessary State enabling legislation, regulations, funding, and staffing are immediately compressed, and the likelihood is increased that the States will not meet legislated compliance deadlines.

Implementing CAA--tight deadlines and delay

In administering CAA one of the most critical problems recently faced by State air program directors was developing and submitting State Implementation Plans to meet the 1977 CAA requirements. Faced with extremely tight time frames for submitting these plans for approval and substantial sanctions imposed on States if the deadlines were not met, State air program directors were very concerned about the impact delayed regulations and guidelines could have on their ability to meet the deadlines. The most often cited examples of delay were the changes in the ozone standard (published as a regulation) and stack height regulations.

Change in the ozone standard

The 1977 CAA amendments and EPA regulations required the States to submit SIPs by January 1, 1979, for those areas not in attainment of a national ambient air quality standard. For the photochemical oxidants (ozone) standard, the plans had to provide for different requirements for, and various levels of, stationary and mobile source controls, depending on whether the nonattainment area was rural or urban and whether the State could demonstrate that attainment could be achieved by December 31, 1982. If a State could not demonstrate attainment of the ozone standard by that date, a 5-year extension could be granted, but more extensive controls would be required. Any change to the standard would affect the States because the attainment status of some areas would be likely to change, as would the control measures included in the SIPs.

The States knew early in 1978 that the ozone standard was likely to be changed. It was not, however, until June 22, 1978, that EPA even proposed such changes. These included (1) raising the health-related primary standard from 0.08 parts per million (ppm), not to be exceeded for more than 1 hour per year, to 0.10 ppm and (2) retaining the 0.08 ppm secondary standard.

In an August 23, 1978, memorandum, the EPA Assistant Administrator for Air, Noise, and Radiation informed EPA regional offices that it was unlikely the standard would be changed before January 1979 and that SIP development should be based on the existing (0.08 ppm) standard. The memorandum further stated, "The SIP may be revised to delete any unnecessary measures * * * when and if we promulgate the change to the standard." The standard was finally changed on February 8, 1979--over 1 month after the States were to have submitted their plans. With that change, both the primary and secondary standards were raised to 0.12 ppm.

Under normal circumstances, the time period between standard proposal and promulgation would not have a significant negative impact on the States. The States would wait for the standard to be changed and then develop regulations and strategies to meet it. In this case, however, the States did not have the luxury of waiting before developing strategies. They were under considerable pressure to submit regulations and strategies by January 1, 1979, and EPA had directed them to use the 0.08 ppm standard in developing their SIPs. With the final change in the standard, however, many areas which could not demonstrate attainment by 1982 under the old standard could now demonstrate attainment and would not be required to adopt more stringent controls. The result was that some States wasted resources developing unneeded regulations, whereas others believed the credibility of their air quality programs was hurt.

South Carolina submitted its SIP revision to EPA in December 1978. It included an automobile inspection and maintenance program and other regulations for two areas which could not demonstrate attainment of the 0.08 ppm standard by 1982. When the standard was changed, the Bureau of Air Quality Control was able to demonstrate attainment in both areas by 1982 and then went back to amend its regulations. This action, however, involved significant time and effort. The State administrative procedures law requires State regulations being passed or amended to go through extensive review by an air pollution control board, as well as public hearings. In this case these administrative procedures had to be followed twice--once for regulations passage and once for their withdrawal. According to the Bureau Chief, much time and effort was wasted by State, Federal, and metropolitan agencies, as well as private industry, in developing an I&M program which was no longer needed.

Resources were also wasted in Arkansas. Using the guidance of 0.08 ppm, EPA contracted for the development of an I&M program for the Little Rock area, which could not demonstrate attainment. When the standard was changed, the Little Rock area demonstrated attainment and the I&M program was no longer needed. Unfortunately, the EPA-contracted work had already been completed.

In addition to wasted resources, some States were very critical of the negative impact on their credibility. The director of the Alabama Division of Air Pollution Control wrote:

> "This agency was placed in a position of seeking an endorsement from the elected officials of Alabama's metropolitan areas for a mandatory automobile inspection/maintenance program while at the same time indicating that the pending

> revision to the ambient standard would eliminate the need for this requirement. Such a position did not serve to enhance these officials' or the public's perception of efforts to improve air quality."

He added:

> "There is obviously little concern for economy or efficiency if due to the unnecessary delay of promulgating this revised standard, states are required to adopt plans which will be inappropriate soon after they are developed."

Stack height regulations

State air pollution program directors told us that the delayed stack height regulations impeded the SIP preparation process. Moreover, the director of Alabama's Division of Air Pollution Control pointed out that once final regulations are issued, the States will have to reassess each new source permit and reevaluate their SIPs' adequacy.

Before the 1977 CAA amendments, major pollution sources were allowed to construct extremely tall stacks as a method to control pollution in lieu of instituting more expensive controls. While such stacks do not actually reduce emissions, they do reduce pollution concentrations near the source (the structure the stack serves, such as a factory) by dispersing them over a wide geographic area. The 1977 amendments, however, severely limited this practice. The amendments, except in narrowly defined circumstances, prohibited the use of stacks and other dispersion methods as a means to achieve clean air standards and required EPA to promulgate stack height regulations by February 8, 1978. These regulations were to establish the maximum stack height--defined as good engineering practice--which must be used for determining the emission limitations of a specific pollution source. For example, if good engineering practice for a particular source is defined as 125 feet, a source with a 500-foot stack cannot use that actual height in determining its emission limitations. Rather, it must use the 125-foot standard. As of September 1, 1979, these regulations still had not been issued in final form.

The delay in finalizing stack height regulations should not have impeded States in preparing their SIPs. Although EPA did not meet the statutory deadline for issuing the stack height regulation, the agency did provide the States with guidance to be used in its stead. According to EPA officials in the Office of Air Quality Planning and Standards, the

the States should have been aware of EPA requirements from at least July 1978, when EPA's draft technical support document for the regulations was provided to the regions. The proposed regulations issued on January 12, 1979, did not change the maximum stack height defined in that document. Officials also pointed out that even if the States had used the guidance provided by the Congress in the legislation--stack height shall not exceed 2-1/2 times the height of such source--the modeling results for emission limitations would have been much the same.

EPA is requiring each new source permit issued to adhere to good engineering practice as defined in the proposed regulations. Should the final regulations differ from those proposed, new source permits will indeed have to be reassessed. Change in the maximum stack height definition would require redeterminations of the emission limitations and perhaps change the degree of emission control needed. If emission limitations change, the States may well have to reevaluate their SIPs.

Implementing CWA--late regulations handicap program implementation

With the nearly total rewrite of water pollution legislation in 1972, EPA was faced with a mammoth regulation-writing effort. The entire program came to a virtual standstill until regulations, guidelines, and standards were developed. Although many of the delays have been corrected, EPA still has not issued regulations and guidelines for the important industrial wastewater pretreatment, and because the States well remember EPA's past regulation delay problems, they continue to be critical of its efforts.

On November 30, 1974, the EPA Construction Grants Review Group cited delays in providing guidance as one of the management problems in implementing CWA. Specifically, the group reported:

> "The Agency has not issued regulations and guidelines on construction grants in a timely manner. Without exception, they were issued later than the dates specified in law, or the dates required for a smooth transition to the new program."

In December 1975 a joint EPA-State task force reported on the prospects of further decentralization of the water pollution control program. After interviewing officials from 20 States, the task force provided its perception of their attitudes:

> "State officials almost invariably referred to the 1972-73 period as the source of many negative attitudes toward EPA which are still held today. The passage of P.L. 92-500 seemed to many to imply a lack of recognition of and confidence in State efforts to control water pollution."

* * * * *

> "This State perspective of the 1972-73 period still colors the attitude of many of the State officials who were interviewed."

In April 1976 the National Commission on Water Quality released its lengthy analysis on implementing the Federal Water Pollution Control Act Amendments of 1972. Commenting on the delayed launching of the new, enlarged Construction Grants Program, the Commission identified the multiple revisions and the sheer volume of regulations as contributors to the delays. The Commission stated, however, that perhaps the major initial delay was the virtual inactivity for 15 of the first 19 months because of the absence of final title II regulations. Commenting on the effect of those delays, the Commission reported:

> "For the first three months, obligations were prohibited; during the next 15 months, prospective grantees apparently delayed formulating project applications according to the new requirements until the final rules were known, while being assured the regulations were imminent. Some projects, proceeding under the requirements of P.L. 84-660 (the prior statute), had to be redeveloped to comply with the new Act, and there was delay in preparing and approving priority criteria and annual State priority lists."

* * * * *

> "EPA said, issuance of regulations and guidance has been consistently tardy, thereby creating confusion and delay."

The Construction Grants Program was not the only CWA program affected by delayed regulations and guidance. The 1972 legislation established areawide planning requirements to address the total impact on water quality within a geographic area. An EPA March 1, 1978, report entitled "Program Strategy for Water Quality Management FY 1979-83" pointed out that the initial program was plagued with problems:

> "Policy was often developed late, had changing objectives, and confused the ongoing planning efforts. There was a belated recognition that the program was a political process, and public participation was under-emphasized. Ill-defined and shifting relationships existed between States and areawides [planning agencies] as to responsibilities. Most importantly, an overly ambitious attempt was made to cover all water quality and waste treatment problems in the initial two-year process."

The problems resulting from delayed regulations have probably not ended. General pretreatment regulations for existing and new sources of pollution were published in final form on June 26, 1978--nearly 6 years after passage of the 1972 amendments. Required pretreatment standards, on which the pretreatment program is based, will not be published for many industry categories until 1980. Moreover, the 1977 CWA amendments required EPA to publish regulations on the disposal and utilization of sludge within 1 year after enactment, but EPA estimates those regulations will be published 20 months after the statutory deadline.

Final regulations can have a significant impact if the State reacted to proposed or interim regulations which were later changed. In its March 1977 report entitled "Diffuse Source Pollution: Policy Considerations for the States," the Council of State Governments provided some insight into the impact of changing regulations:

> "* * * the Standards set and the programs proposed by EPA have been repeatedly subject to modification and repeatedly challenged in court. This has often left state and local government officials supporting a program or enforcing standards which the courts or EPA have altered or limited."

As an example of regulation change, the administrator of Wisconsin's Division of Environmental Standards told us that Wisconsin depends on timely issuance of regulations, standards, and guidelines. State law provides that no standards or restrictions can be imposed that are stricter than those established by EPA. Wisconsin used EPA proposed effluent limitations when it issued NPDES permits for its paper industry. When EPA finalized those limitations in less stringent form, the paper industry sued the State and won its case. In addition to the delays caused just for the legal disposition of the case, the administrator said that the State had to expend unplanned resources to prepare its legal defense and rewrite the permits to conform to EPA's final regulations.

Implementing FIFRA--late regulations and loss of program credibility

Most directors of State FIFRA programs cited the late publication of a restricted pesticides list as having a significant negative impact on their programs. This particular delay affected implementation of the applicator certification program and tarnished the credibility of State program staff.

Publication of a restricted-use list was the most commonly cited delay which negatively affected State programs. Over half the State pesticide officials said that the delayed issuance of the list had a significant negative impact on their programs. Pesticide applicators had to be trained and certified before they could use or even purchase any pesticide on this list. The problem occurred after the States had trained and certified applicators but then were unable to produce such a restricted-use list.

In its November 1978 report entitled "Pesticide Applicator Certification and Training: The Impact of Federal Funding Termination," the Council of State Governments reported:

> "The inability of EPA to produce a restricted products list caused friction between that agency and the states. State administrators said that EPA's instruction to proceed with certification of applicators before receipt of a restricted-use list was premature. State lead agencies were unable to convince farmers to undergo applicator training and certification based on the possibility that certain pesticides would be restricted."

The director of Regulatory and Public Service Programs for South Carolina's pesticide program told us that the delay in publishing the restricted-use list had delayed implementation of a needed program and hurt the State's credibility with the public. Specifically, he wrote in response to our questionnaire:

> "Restrictions on the use and application of pesticides is necessary and this necessity is well supported. EPA's complete disregard for deadlines has, however, made a shamble of the States proposed programs and it is doubtful if State plans can be carried out in a meaningful manner. * * * Delays and unfulfilled deadlines have eroded the excellent cooperation of the individuals regulated by the legislation."

The deputy commissioner of Minnesota's Department of Agriculture was even more critical of the situation. He stated that prompt classification of pesticides was badly needed, yet EPA has spent years developing criteria and still has not completed the job, thus stymieing compliance with the legislative intent to improve pesticide management and use.

A Utah official stated that because the list had not been developed, certified applicators began questioning the need to be certified. Wisconson's chief of pesticide use and control related that his program had lost impetus because of the lack of a restricted-use list. The chief of the Illinois Plant and Apiary Protection Bureau said:

> "Our efforts of the past 2-1/2 years were aimed at compliance with the requirements imposed by restricted use, but a list of restricted chemicals which affect the farmer (our biggest pesticide user) has not yet materialized. Our farmers have heard wolf cried once too often and are skeptical of most regulation functions in the pesticide field."

Implementing RCRA--establishing programs without regulations

At the time of our review, EPA had not published in final form any significant RCRA hazardous waste regulations. About 78 percent of the State directors responsible for implementing RCRA said that the lack of final EPA regulations negatively affected program planning. Such delays leave the States in a quandary as to what to expect as they try to get their own programs under way. Moreover, State officials point to the loss of credibility caused by such delays.

RCRA required EPA to develop the regulations for the management of hazardous waste by April 21, 1978, and to operate a hazardous waste regulatory program in those States not electing to assume responsibility for the program. As shown in table 10, however, EPA's latest estimated date for publishing all final regulations is 24 months beyond the statutory deadline.

The States have been receiving Federal grant funds to develop hazardous waste programs, but EPA has not published final guidelines to help them develop their programs. Responding to our questionnaire, the chief of the Kansas Solid Waste Program wrote:

> "The principal problem encountered by my State has been the delay by EPA in formulating the rules and regulations for subtitle C and D of RCRA. Our state passed hazardous waste legislation in 1977 in response to RCRA. As of this date, we have little guidance in formulating a program and are told that final regulations are at least one year away."

According to Wyoming's Solid Waste Management Program supervisor, the State legislature did not pass a hazardous waste bill in its last session because of a general attitude favoring fiscal constraint and the fact that without regulations no one knew the anticipated scope of the hazardous waste program.

Table 10

Promulgation of RCRA Regulations

Section of act	Months to publish final regulation: Statutory requirement	Months to publish final regulation: Actual or estimated(E)
Hazardous Waste:		
3001--Identification and listing of hazardous waste	18	42(E)
3002--Standards applicable to generators of hazardous waste	18	40
3003--Standards applicable to transporters of hazardous waste	18	40
3004--Standards applicable to owners and operators of hazardous waste treatment storage and disposal facilities	18	42(E)
3005--Permits for treatment, storage, and disposal of hazardous waste	18	42(E)
Solid waste:		
4002--State solid waste plans	18	33
4004--Criteria for sanitary landfills	12	35

Rhode Island passed a hazardous waste law in May 1978 and is in the process of phasing in hazardous waste regulations. The supervisor of Rhode Island's Solid Waste Management Program recognizes that the State faces a potential problem if its regulations are not acceptable to EPA once EPA publishes its own final regulations. He said that EPA has already proposed a new definition of hazardous waste which, if it stands, will probably require the State to go through its own regulatory process again. On the other hand, the manager of the Illinois Division of Land Pollution Control told us he is reluctant to file State enabling legislation until he is sure of the direction EPA is taking.

Under RCRA's subtitle D, EPA was to publish regulations within 1 year after enactment on the criteria to be used for distinguishing between sanitary landfills and open dumps. These criteria would be the basis for a nationwide inventory of all open dumps. State solid waste plans must provide for the closing or upgrading of those facilities included in the inventory. The criteria, however, were not published by EPA until September 13, 1979.

The delay of disposal site criteria disturbed some State officials. The Chief of the Kansas Solid Waste Program wrote:

> "We staffed to conduct the RCRA inventory of land disposal sites at the beginning of 1978. Now we are told that it will be at least 6 months before the inventory can possibly begin."

Alaska's Land Use Section supervisor stated:

> "The problems with developing the criteria for the classification of 'open dumps' have really hurt us. Our credibility with the municipal people has suffered. I fear some of them have decided the whole RCRA is a sham."

Statutory deadlines do not reflect time needed to develop regulations

While State officials have criticized EPA for issuing late regulations, EPA has not been entirely at fault. Statutory deadlines established for issuing regulations have not always taken into account the lengthy time period needed to develop major regulations.

NAS in a 1977 study on EPA decisionmaking reported that, on the average, EPA takes 25 months to publish a final regulation after the act is passed. Considering current delays in issuing major regulations in programs such as RCRA, that 25-month average is probably low. The Congress, however, has used periods of 18 months or less when establishing statutory deadlines for regulation development.

Although we did not verify the accuracy of the 25-month average, the EPA regulation development process is lengthy. (App. I provides a detailed explanation of the process.) To shorten it could require giving up some important benefits, such as outside participation. NAS noted that EPA procedures for writing standards and regulations are elaborate compared with practices in other Federal agencies but found no major flaws in the procedures. In fact, NAS gave high marks to the EPA decisionmaking process. A further indication of the soundness of the EPA process is that the White House used it as a model for the President's March 1978 executive order on improving Government regulations.

External participation is important. The length of the EPA regulation development process is due in part to its attempts to solicit outside participation. NAS pointed out that outside review and comment permit new information, new analysis, and different points of view to be brought to bear on the decisions. In three-fourths of the decisions NAS reviewed, outside comment revealed new issues that had to be resolved.

Outside participation, however, takes time. Industrial and environmental interests claim that the normal 60-day comment period is too short. State officials concurred as they pointed to the volume of regulations they must review. NAS reported that it normally takes EPA 6 months to rework a regulation after the comment period closes and to obtain clearance from the EPA steering committee (comprising senior EPA officials or their representatives).

NAS was not critical of the use of strict statutory deadlines for regulation development and discussed the merits and criticisms of such an approach. Among the supporting arguments are that strict deadlines

- --force the agency to gather available information rapidly and to act on environmental problems without undue delay,
- --enable the agency to resist external pressures for delay,
- --reflect a policy decision by the Congress that action must be taken even if all technical information is not in hand, and

--provide a means for the Congress to set national priorities.

However, on the negative side, NAS stated that strict deadlines

--may not permit the generation, acquisition, or analysis of new scientific and technical information that might have an impact on the decisions;

--often create procedural and administrative problems for the agency, even if the information is in hand; and,

--can limit the time available for negotiation between EPA and interested parties and thus can force confrontation between affected parties and EPA.

Deadlines not only may force decisions based on inadequate information and restrict outside input into the decisionmaking process, but they can also negatively affect program implementation. In addition, deadlines can force the diversion of limited resources to lower priority matters that fall under deadlines, causing the neglect of problems for which there are no deadlines.

In its April 1976 Staff Report, the National Commission on Water Quality recognized that many of the delays associated with Federal decisions and actions involving CWA were unavoidable consequences of unrealistically short statutory deadlines. NAS described the overall impact of strict deadlines as follows:

> "The time necessary to carry out a statutory requirement such as setting a standard is difficult to predict, and Congress may occasionally establish too strict a deadline. However, the violation of a statutory deadline will not only affect the timing of that decision but will often result in delays in the whole schedule for environmental improvement envisaged in the law. Also the failure of EPA to meet statutory deadlines will make it difficult for EPA to argue for strict compliance with attainment deadlines by industry."

Moreover, statutory deadlines create expectations on the part of the States and general public. When those deadlines are not met, the programs' credibility suffers and EPA and the States are further alienated.

The past chairman, Conference of State Sanitary Engineers Committee on Water Supply, suggested that deadlines to meet act objectives should be based on a period of years after supporting regulations are issued. In this way the time period available to the States for program implementation would not be constricted by late issuance of regulations. This has been done, for example, under RCRA, which requires EPA to conduct an inventory within 1 year after issuing the regulations establishing sanitary landfill criteria. Moreover, the act provides that State solid waste plans must provide for closing open dumps within 5 years after the publication of the inventory.

INFLEXIBILITY OF EPA REGULATIONS AND GUIDELINES ARE TROUBLESOME TO STATES

Overall, State environmental officials identified the lack of flexibility in EPA regulations and guidelines as the second greatest problem they face in managing their programs. They argue that States are markedly different, yet regulations as written are insensitive to the problems, needs, resources, and basic uniqueness of the individual States. Moreover, States complained that many regulations stifle any State managerial prerogatives not only by setting objectives but also by detailing steps to achieve them.

The States do differ markedly. In a 1977 report on environmental decisionmaking, NAS described these differences:

> "There is little uniformity in either program or structure among state and local environmental programs. The political orientation of these agencies is, of course, as varied as the states themselves, ranging from environmentally progressive to environmentally indifferent. Some programs are embedded in public health departments, some are in separate air and water agencies, some are in multimedia organizations structured like EPA itself, and some are tucked into state-level superagencies with broad missions that include economic development. Some are standard executive departments, some are independent citizen boards, and some possess adjudicatory as well as executive powers."

Moreover, the basic capabilities of the States vary widely. As the EPA Administrator said in July 1978, "some are more aggressive than others and some have more adequate resources than others."

Inflexible regulations affect State programs

The States believe that EPA has not given them the flexibility to adapt their programs or unique characteristics to the national regulations. Nearly two-thirds of State environmental officials identified the inflexibility of regulations and guidelines as significantly impeding their programs.

In a June 1977 report entitled "The Environment Comes of Age," the Council of State Governments reported:

> "State officials are outspoken on the difficulty which EPA regulations cause for the creative design of programs and flexible administration of regulations. National standards and regulations cannot be applicable to the environmental, economic, and governmental peculiarities of all states. The difficulty of meshing state environmental conditions and programs with federal requirements varies according to the state involved and with the program. Even when good working relations with EPA regional offices exist, and when the differences in federal and state statutes are acknowledged, EPA's perceived rigidity in enforcing federal regulations creates hardships for state governments.
>
> "Officials in several states assert that federal insistence on adherence to federal regulations undercuts efforts to develop flexible state programs that are consistent with overall state objectives. Furthermore, where state initiatives preceded federal policies, the requirement to adhere to EPA regulations may hamper an ongoing program. In such instances, federal regulations are held to be unreal, unresponsive, unnecessary, and inflexible."

The chairman of California's Water Resources Control Board summarized many State officials' feelings when he wrote:

> "Most of the States feel that a highly effective program could be conducted with existing, or even less resources if the EPA regulations were not as detailed and as restrictive and if EPA was a little more flexible in its administration of the programs. Yet, again, they seem to be going in the opposite direction--making things more cumbersome."

Some regulations can impose costly requirements which may be unnecessary. The supervisor of Nevada's drinking water program cited the EPA requirement for daily turbidity measurements in all public water systems as an example of unrealistic standardized procedures. The supervisor pointed out that for small systems with part-time operators, daily measurements are impossible. For others, because of the nature of the water source, turbidity is not a problem and sampling for it is a highly questionable requirement.

Alaska's Air Quality Control supervisor voiced much the same criticism of new-source-performance standards for sewage sludge incinerators. He pointed out that in the entire State, only two such incinerators are in operation and only six more are planned, all of which are or will be located in small communities where landfills are not a viable alternative. The supervisor explained that the standard requires control equipment which is energy intensive and too costly for a small community to afford. Furthermore, he added that any pollution reduction would not have any impact on ambient air quality.

Some State officials do not believe EPA gives adequate attention to good existing State programs. The director of North Dakota's Solid Waste Division wrote: "EPA headquarters has continually assumed that the States are incapable of developing or administering effective environmental programs." In a later discussion, he said that EPA does not accept or recognize the fact that many States, including North Dakota, already have sound solid waste programs. The manager of Illinois' Division of Land Pollution Control echoed these thoughts when he said that Illinois has had an active solid waste program since 1970, in which the State closed all open burning dumps and conducted an inventory of landfill sites. Yet, because of EPA standardized regulations, which do not recognize that some State programs are already in place, the manager said that Illinois will have to redo its landfill inventory to meet EPA criteria.

Regulations perceived as inflexible may defeat State implementation efforts

The extent of State involvement in an environmental program could well hinge on the perceived flexibility of EPA regulations. This is especially true of the RCRA hazardous waste management section, which the Federal Government will implement only when EPA does not approve the State program. The degree of flexibility in EPA final regulations on hazardous waste management will be a key factor in several State decisions to assume responsibility for implementing that program.

EPA proposed hazardous waste management program regulations in the Federal Register on December 18, 1978, and issued final regulations on May 2, 1980. Although these regulations were still in draft stage at the time of our questionnaire, State reactions to them clearly illustrate the flexibility issue.

At least one State (Alaska) does not plan to administer and enforce the hazardous waste management program. The supervisor of Alaska's Land Use Section singled out EPA regulations and guidelines as the most significant factor contributing to the State's decision and said there is "too much effort for too little gain."

Seven other States (Hawaii, Maryland, Oregon, Pennsylvania, Virginia, West Virginia, and Wyoming) are uncertain whether they will administer and enforce a hazardous waste program. Based on the comments made by State officials from three of these States, the inflexibility of the regulations is the main issue. Oregon, for example, is basically adopting a wait and see stance before the State applies to manage the Federal hazardous waste program. Oregon's position was clearly expressed in an interoffice memorandum dated February 1, 1979, which the administrator of Oregon's Solid Waste Division provided us to show his State's thinking on the implementation of RCRA.

> "* * * The fundamental decision is whether we want to continue a generally successful hazardous waste program started in 1971, or to withdraw and let the EPA manage hazardous waste in Oregon. * * * Our concerns include EPA's tendency to become preoccupied with procedural uniformity and the heavy handed attitude sometimes portrayed by their Enforcement Branch. * * * An effective well-balanced hazardous waste management program cannot be expected to materialize out of a state program encumbered by an inflexible straight-jacket of EPA regulations."

Regulations could provide more flexibility

The consequence of writing regulations for a national audience with markedly different characteristics is that those regulations do not fit any State well. The more specific the regulations, the more troublesome the fit. As evidenced by State environmental officials' classification of inflexible regulations as the second greatest obstacle to managing their programs, the inevitable result is that few

States are satisfied. While the task of writing national regulations is admittedly not an easy one, they can be made more flexible.

The National Governors Association, in its February 1977 report, identified Federal regulations that are prescriptive in methodology rather than oriented toward results as one of "six general problems which plague intergovernmental programs." On November 21, 1978, we testified on the costs and benefits of Government regulation before the Subcommittee on Consumer of the Senate Committee on Commerce, Science, and Transportation. In that testimony, we suggested several regulatory alternatives and reforms which could lower the cost of regulation, one of which was performance-oriented regulation. Specifically, we stated:

> "Regulation which specifies a desired outcome without specifying the methods by which that outcome must be achieved, offer regulated bodies an opportunity to devise their own means of compliance, which may be less costly than one uniformly imposed technological solution."

In its December 1975 report on decentralizing the water pollution control program, the EPA-State task force concluded:

> "Headquarters guidance which is concise, is flexible and emphasizes objectives rather than procedures is more appropriate to current and future operations of the water pollution control program. Although exceptions to this general rule may be necessary in the case of highly technical guidance, it is generally preferable to risk error on the side of flexibility than on the side of rigidity and detail."

In a similar vein, State environmental officials point to the differences among States and suggest the only way to make national regulations work is to make them general. For example, a Texas solid waste official told us that EPA should provide performance standards and allow the States to meet those standards by whatever methods they choose. The director of Iowa's Chemicals and Water Quality Division suggested that EPA establish minimal guidelines for the States to follow, evaluate State performance, and take aggressive sanctions against noncomplying States.

Inflexible regulations can result from congressional direction

NAS, in its study on EPA decisionmaking, concluded that when specific criticisms of EPA decisionmaking are traced to their roots, the problems more frequently derive from the stringent directives of the environmental statutes than from faulty administrative action. NAS further stated:

> "The laws do not allow EPA unlimited discretion in achieving these goals at least cost; instead, the statutes include principles, limitations and procedural requirements that guide the exercise of EPA's authority."

The fluoride standard under SDWA is one example of a national standard issued as a regulation which cannot be equitably applied nationwide because of the congressional direction provided.

According to statements made by the Conference of State Sanitary Engineers, large water systems have not had any significant problems in complying with SWDA provisions. It is small systems (serving fewer than 1,000 people) which require much State effort and which, according to the past chairman, CSSE Committee on Water Supply, represent about 80 percent of this Nation's water systems. CSSE testified before the Congress:

> "The Safe Drinking Water Act does not permit the necessary flexibility to the Administrator or to the State to address the problems of small systems in a technical or professional manner and to use reasonableness."

In House Report No. 93-1185, which accompanied SDWA through congressional hearings, the House Committee on Interstate and Foreign Commerce stated:

> " * * * the quality of the Nation's drinking water can only be upgraded if the systems which provide water to the public are organized so as to be most cost-effective. In general, this means larger systems are to be encouraged and smaller systems discouraged. For this reason, the Committee intends that the Administrator's determination of what methods are generally available (taking cost into account) is to be based on what may reasonably be afforded by large metropolitan or regional public water systems."

> "This, of course, means that some small water systems which cannot afford the methods determined by the Administrator to be 'generally available' will be unable promptly to comply with all primary regulations. For this reason, authority to grant exemption from the effective date of the primary regulations and thus to delay the date for compliance by public water systems has been provided in section 1416. However, this period should be used to develop a regional water system which can afford to purchase and use such methods, to seek additional sources of funding such as State aid, or to develop a plan for otherwise serving the affected population after any existing inadequate system is closed."

In July 1978 CSSE explained the fluoride problem in testimony before the Senate Subcommittee on Environmental Pollution.

> "One of the more vexing problems is presented by the fluoride standard. In areas of the southeast, south and southwest some of the groundwaters contain excessive amounts of naturally occurring fluoride. These amounts exceed the maximum containment level. The principal effect of high fluoride levels is the mottling of the teeth of users of such waters which may be considered cosmetic. While there are methods to remove fluoride from the water they are expensive and difficult to manage. Basically they are impractical or infeasible for the small water system. In these areas no other water sources are reasonably available."

The problem of naturally occurring high levels of fluoride in ground water supplies may be more extensive than stated above. Similar problems, for example, were identified by drinking water officials in North Dakota and New Hampshire.

The States can give exemptions to the small water suppliers which are not meeting the fluoride standard. An exemption, however, merely means that the time is extended for complying with the standards from June 1977 to January 1981 for an individual system, or January 1983 if the system agrees to become part of a regional system. The treatment equipment must be installed by those deadlines, but the real dilemma remains. The cost-effectiveness determination will still be based on what is affordable by a large urban water supply.

The States question the benefit to be derived from meeting such a standard. They argue that no known health hazard exists with excessive fluoride concentrations and question why a national standard is mandated for discoloration of teeth, especially when the treatment cost is so high. This State argument is basically supported by an NAS study mandated by SDWA which was issued in June 1977. NAS reported that epidemiological studies where the water is naturally high in fluoride have shown no adverse effects other than dental mottling, except in rare cases. Moreover, NAS stated that sociological studies are needed to ascertain whether dental mottling is even regarded as an adverse health effect. Based on this, some States suggest that fluoride should be classified as a secondary standard (esthetic) rather than a primary health standard. In that way the State--not EPA--could determine the extent of enforcement.

REGULATIONS NOT THE ONLY CONTROLS OVER STATE PROGRAMS

While regulations are the more obvious examples of EPA controls over State programs, other more subtle control mechanisms exist which, according to State officials, also negatively affect program implementation. Both State lead agency administrators and program directors ranked the extent of controls placed on the States by EPA as the fourth most significant problem they face in managing Federal environmental programs. The State criticism arises, however, not because these controls exist, but because of their excessive detail and inflexibility.

Grant conditions specify State actions

Based on EPA headquarters guidance, EPA regions and the States enter into annual grant agreements which outline various tasks the States are to perform. Many State program directors who identified excessive EPA controls as a very great obstacle to managing their programs believe that their management prerogatives are limited by detailed grant requirements.

The strongest complaints from State officials centered around the fact that EPA funds only part of the State programs yet, through grant conditions, virtually controls the entire program. They believe they are given little freedom to structure their programs and to establish their own strategies to combat pollution. The commissioner of Kentucky's Bureau of Environmental Protection explained that the greatest problem his State faces in implementing environmental programs is that Federal grants are directed at specific tasks and do not allow the flexibility to set priorities or address problems unique to the State of Kentucky. Other State officials echoed much the same sentiments.

The chief of West Virginia's Drinking Water Division pointed out that State agencies have functions other than administering SDWA and need more opportunity to set priorities for their workloads. The State of Washington's assistant director for air programs stated that "Federal control has directed all resources to CAA requirements regardless of need or other state priorities." The chief of Arizona's Bureau of Air Quality Control likewise pointed out that although Federal funds represent only about one-third of his budget, EPA has virtually total control of the program through the grant document.

Some State air program officials described the grant procedure as a paper exercise resulting in wasted time and resources to prepare the grant document. They noted that it is not possible within the States' limited resources to perform all the tasks outlined in the grant applications. One State official noted that the current procedure amounts to "lying to the public," for the public assumes the tasks will be performed, which is not the case. Yet the States agree to perform to ensure receiving their grants.

In EPA region I, some States complained of being forced to allocate resources nearly equally for planning, monitoring, and enforcement. The chief of the Air Branch, EPA region I, agreed that this is the case and has sometimes resulted in misdirected priorities. He pointed out that program emphasis should have varied from year to year, depending on needs. He also noted that it was often impossible for the States to perform all the tasks listed in the grant document. He said, however, that while preemption of State priorities was a fact of the past, the zero-based budgeting process will help alleviate this problem. For example, in fiscal year 1979, EPA region I asked the States to set priorities and to indicate what tasks they would be able to perform at various funding levels. As in the past, EPA gave the States a list of outputs. The difference, however, is that the States were not required to indicate that they would be able to perform all the tasks, nor were they restricted in allocating resources.

Program Requirements Memorandums (PRMs)--regulations outside the rulemaking process?

In administering the Construction Grant Program, EPA issues PRMs which transmit program policy not available in existing regulations or in other policy documents. Adherence to these policy transmittals is mandatory. To the States, however, these are regulations developed and issued outside of the rulemaking process.

Water pollution program directors in four States were especially critical of PRMs. Several pointed out that the memorandums are either effective retroactively or upon issuance, which immediately stalls every project in the pipeline. But the common complaint was that PRMs carry the weight of regulations but are developed without benefit of public notice, hearings, or publication in the Federal Register. As stated by one program director, their use appears to be rulemaking without any formalized process.

By majority vote of its membership, ASIWPCA recommended that EPA define the purpose of policy statements such as PRMs and involve those responsible for implementation. Specifically, ASIWPCA in its May 1979 report stated:

> "EPA should reevaluate the concept of PRM's. They currently are used by EPA as if they had the significance and force of regulation yet they are developed internally by EPA without the thorough public review and comment that regulations receive. It is the view of the States that substantive issues should be handled through the regulation process and that PRM's should deal with non-substantive issues and be viewed strictly as guidance, with compliance discretionary."

State/EPA agreements--a good idea hurt by implementation

Well-intentioned ideas can readily go astray once forced on a widely disparate national audience. Such is the case with State/EPA agreements. Recognizing that solutions to environmental problems are frequently interrelated, these agreements would reflect decisions made by the States and EPA on environmental problems, priorities, timing of solutions, responsibilities, and allocation of resources among water pollution, drinking water, and solid waste programs.

The concept of directing program efforts to resolve water supply, solid waste, and water pollution problems on a coordinated and integrated basis certainly cannot be faulted. The concept is sound. What is faulted, at least from the State viewpoint, is that all States are forced into such an approach whether they want it or not and whether or not they are organizationally set up to develop and actually implement it.

On October 27, 1978, EPA published a concept paper which briefly explained the State/EPA agreement approach, provided preliminary regulatory language, and solicited State comments. State and interstate organizations representing most of the States provided written comments to EPA. While they generally favored the concept, many were concerned about its implementation.

CSSE, representing 48 of the 50 State water supply programs, expressed its grave concern over the "crippling effect" the proposed State/EPA agreement regulations would have on State water supply programs if promulgated. Specifically, the chairman stated:

> "The excellent progress made since 1970 in improving state water supply programs will be negated by this obvious attempt by EPA to dictate to state governments how they should manage their internal affairs. It is an action that contradicts the recent efforts to enhance EPA/State relations * * *"

The Governor of Louisiana, commenting as chairman of the National Governor's Association Subcommittee on Waste Management, generally praised the concept but added several cautionary comments:

> "First, the State-EPA agreement simply must not be allowed to generate increased red tape and paperwork requirements. This would be a waste of the very resources supposedly made more available for better management and problem-solving, and would vitiate the State initiatives supposedly encouraged. Second, the phasing of implementation of the regulation should be keyed to the existing willingness and ability of the various States to move into this mode of operation, and should be based on incentives rather than sanctions, to encourage voluntary approaches to the maximum degree. In my experience, few things change the world overnight, and most of those are catastrophies."

States criticized this approach as meddling in State internal affairs by forcing organizational changes in State government. (Of the 50 States, for example, 21 do not have water pollution, drinking water, and solid waste programs housed under the same agency.) Some feared increased paperwork, redtape, and reporting requirements. Others questioned the legal basis for these regulations and suggested that EPA should put its own house in order before imposing additional requirements on the States.

On February 27, 1979, EPA issued guidance in lieu of formal regulations on the development of fiscal year 1980 State/EPA agreements. That guidance also established several EPA policies, one of which was that the State/EPA agreement must be completed and signed before award of grants under any of the covered programs. In other words, for fiscal year 1980, States would not receive grants for the administration of water pollution, drinking water, or solid waste programs unless an agreement was signed which included all of them. That is the crux of the problem--even though this was "guidance," States were not given the opportunity to voluntarily comply. Moreover, to the States, this was simply another requirement which not only set objectives but also detailed how the States were to attain them.

CHAPTER 4

STATES PLAGUED BY STAFFING PROBLEMS, PAPERWORK REQUIREMENTS, AND UNCERTAIN FEDERAL FUNDING

The States were once willing to assume responsibility for Federal environmental programs, but times have changed. With concern over government growth and general fiscal pressure on State government, Federal regulations and requirements which impose increased costs on States will come under increased State scrutiny. Obtaining State enabling legislation and funding to carry out Federal environmental programs is becoming more difficult. State governments are concerned about continued Federal funding for programs as well as the resources they will have to commit to carry them out.

Because of comparatively low State salaries, States cannot successfully compete in the market place for professional engineers. As a result, the continuity and effectiveness of State programs are hurt by high staff turnover, vacancies unfilled for lengthy periods, and time lost while training new staff. Staffing problems are further aggravated by EPA administrative requirements, which divert limited staff from program implementation, and by the uncertainties of Federal funding. States not only do not know what their Federal grants will be when preparing their budgets, but often receive grants late. As a result, both planning and program implementation are impeded.

STATES SUPPORT ENVIRONMENTAL PROGRAMS BUT FACE RESOURCE CONSTRAINTS

Most States either intend to implement or are implementing Federal environmental programs. As reported in June 1977 by the Council of State Governments, "environmental programs are, today, as much a part of most state governments as highway departments were in the 1950s." The States, however, are not likely to greet new environmental programs with the same enthusiasm as in the past. Administrators of State lead environmental agencies foresee continued support of existing environmental programs but not to the extent experienced during the past 5 years.

State environmental emphasis leveling off

The flurry to start new environmental programs in response to Federal initiatives has ended. As typically expressed by one lead agency administrator, "we have joined the establishment and have to fit our programs and goals in with all others unlike the peak periods of enthusiasm in the early 70s."

In its March 1977 report entitled, "Diffuse Source Pollution: Policy Considerations for the States," the Council of State Governments discussed these same concerns:

> "There is a growing concern across the country about the relationship of federally funded programs and state needs, priorities, and fiscal capacity. This concern can be found in both the legislative and executive branches of state government."
>
> * * * * *
>
> "The day has passed, if it ever really existed, when the carrot of federal grant incentives will be uncritically accepted as a cost-free addition to the state budget."

About 73 percent of the State lead environmental agency administrators believe that their States' environmental emphasis increased in the past 5 years, but only 47 percent believe it will increase over the next 2 years. When individual responses are compared to determine how the administrators perceive the level of emphasis will change between those time periods, 46 percent of the administrators believe that State emphasis on environmental issues over the next 2 years will be less than the previous 5 years. Moreover, 30 percent see a continuation of the same emphasis in the next 2 years than existed in the past 5.

The lead agency administrators stated that this dampening of environmental emphasis has generally resulted from a more fiscally conservative attitude throughout State government. Reasons typically cited were:

--"The 'hold-the-line' growth policy of government will minimize change" (Ga.).

--"Proposition 13 fever will impact all State programs" (Miss.).

--"The current effort is considered to be in balance when considering all other functions of State grants" (Vt.).

--"Present legislative candidates were elected on platforms dedicated to limiting general governmental growth and specific regulatory programs" (Wyo.).

--"The economy and development of activities that will produce jobs or attract industry are major social and political issues" (Mass.).

--"Public support is diminishing for all government especially regulatory programs which are perceived to have a negative economic impact" (Minn.).

Barriers to obtaining State enabling legislation

Based on questionnaire responses, States generally have had few problems enacting State enabling legislation to carry out the Federal legislation. However, the reasons cited for a general decline in environmental emphasis were also named by State program directors as major barriers to securing passage of State enabling legislation now.

Table 11 shows a consolidated State program director response (excluding RCRA) on the extent to which several factors are obstacles to enabling legislation passage. As shown, the amount of Federal funding is not nearly as much an issue in obtaining State enabling legislation as is the probability of continued Federal funding. The most critical factors are the State resources required to execute the program and State philosophical differences with the intent of the Federal legislation.

Table 11

Percentage of Program Directors Identifying Following Factors as Very Great or Substantial Obstacles to Passage of State Enabling Legislation (note a)

Factors	All programs	State program CAA	CWA	FIFRA	SDWA
	(percent)				
Current amount of Federal funding	16.9	11.1	26.7	17.4	10.0
Probability of continued Federal funding support	37.2	28.9	42.2	34.8	40.0
Current EPA regulations and guidelines	28.4	31.1	22.2	30.4	27.5
State philosophical differences with intent of Federal legislation	41.9	60.0	31.1	39.1	32.5
State resources required to implement and administer the program	41.3	44.4	53.3	30.4	32.5

a/Total responses: 176. The question was not asked of RCRA program directors. Four CWA program directors did not answer this question.

Note: Percentages are not additive due to multiple responses.

FIFRA legislation was in place in all 46 States we contacted, and of the 2 States which needed legislation to carry out SDWA, both expected to obtain it. Since EPA had not finalized most of the significant RCRA regulations, we did not ask State solid waste program directors any questions on needed enabling legislation. States do need legislation to meet requirements imposed by both CAA and CWA.

Of 45 State air pollution control programs, a total of 37 need new State legislation primarily in two specific areas--the automobile inspection and maintenance program and a permit fee to be charged major sources. For CWA, directors of 19 State water pollution control programs stated either that new legislation was needed or that they were unsure. The most commonly cited area was the NPDES program.

The major barriers to obtaining needed State legislation, as identified by air and water pollution control program directors, may be indicative of State governments' changing attitudes toward environmental programs. Directors of State CAA and CWA programs identified barriers such as a general resistance to regulatory programs, State fiscal and personnel constraints, implementation costs, and concerns over the adequacy and promise of continued Federal funding.

MAINTAINING STATE STAFFING LEVELS--A CONSTANT CHALLENGE

Staffing constraints have been and will continue to be a significant problem in managing State environmental programs. High vacancy rates evidence the difficulty State environmental officials have in recruiting and retaining professional engineers. Clearly, the main culprit is relatively low State salary structures, but other obstacles also exist.

As shown in table 12, State programs as of January 1, 1979, had vacancy rates ranging from 7.1 percent to 20.4 percent, or 11.7 percent overall. This vacancy problem could be even more acute now because State directors expected a 6.7 percent increase overall in authorized positions by October 1, 1979, and the main reason cited for the difficulty in filling positions still exists--low State salaries.

Table 12

Professional Positions Authorized and Filled as of January 1, 1979

Program	States providing data	Professional positions as of January 1, 1979 Authorized	Filled	Vacancy rate (percent)
CWA	43	5,088	4,544	10.7
CAA	44	3,074	2,771	9.9
SDWA	40	1,189	1,014	14.7
RCRA	46	1,137	905	20.4
FIFRA	46	580	539	7.1
Total		11,068	9,773	11.7

State salary structures are not competitive with private industry or the Federal Government, especially for the highly specialized positions required in pollution control programs. In December 1975 an EPA-State task force looking at decentralization in the water pollution control program reported:

> "Low State salaries, among other factors, have resulted in vacancy rates of 10 percent to 30 percent in perhaps half of all State programs. Although the extent of the problem varies from State to State, it was apparent to the Task Force that in the State agencies visited, staffing difficulties represented a significant obstacle to building more effective programs. Vacant positions are only one manifestation of this problem. High turnover, particularly in key positions, also can severely reduce effectiveness."

Those statements are true today across all programs we reviewed.

States are having difficulties in filling positions

A total of 82 percent of all program directors had problems filling positions on a timely basis. (See table 13.) The two most common reasons given were low State salaries and lack of qualified applicants, both of which are strongly interrelated since qualified applicants are simply not available at the salaries offered. States provided examples of annual State salaries which were $1,000 to $6,000 less than salaries offered outside of State government for entry-level professional engineers.

Table 13

Program Directors Having Difficulty Filling Positions

Program	States responding	States having difficulty Number	States having difficulty Percent	Major reasons cited State salary	Major reasons cited No qualified applicants
				-----(percent)-----	
CAA	45	41	91.1	82.9	65.9
CWA	45	41	91.1	85.4	53.7
FIFRA	46	21	45.7	57.1	33.3
RCRA	46	40	75.0	75.0	57.5
SDWA	40	39	74.4	74.4	53.8
Total	222	182	82.0		

Note: Percentages not additive due to multiple responses.

In our report entitled "Water Quality Management Planning Is Not Comprehensive and May Not Be Effective for Many Years" (CED-78-167, Dec. 11, 1978), we discussed typical problems encountered when bringing new staff on board:

> "Another related problem attributable to the short statutory timeframe for 208 [areawide] planning concerns the ability of 208 planning agencies to attract and hire qualified people. According to EPA officials in Region I, difficulties were experienced in recruiting qualified people because of lack of experience and expertise in this field. In addition, Maine's 208 program experienced complications because its wage level was low compared to private and Federal wage scales. The Pima Association of Government Officials in Tucson, Arizona, said that an adequate 208 plan could be developed but that it would take 7 months longer because they experienced problems trying to obtain staffing. According to these officials, the required expertise was not available, and it took approximately 7 months to hire the staff, train them, and begin operations. Portland, Maine, officials stated that it took 6 months to develop a project control plan, hire the staff, and get the work started with no time left for problems and interruptions. They also stated that too many things can go wrong in the technical planning aspects. For example, it took the agency a year, rather than the planned 4 months, to develop a data management system."

One inevitable result of not being able to compete successfully in the marketplace is that the State must accept less than it initially planned on. For example, the administrator of Louisiana's Solid Waste and Vector Control Unit said that he had tried to hire eight engineers for his program, but none would take the jobs at the salaries offered. By eliminating the requirement for an engineering degree, he has since been able to fill the positions. Vermont's director of Air and Solid Waste Programs told us of the difficulty he had had in filling a senior engineer position. Unable to find any qualified applicants on the civil service lists, he advertised in national trade journals. Many qualified people throughout the country expressed an interest until they learned the salary was only $14,430 a year. He filled the engineering position 14 months later after he had changed the job description to eliminate the engineering degree requirement.

States losing experienced personnel

The problem of low salaries is not limited to hiring. As shown in tables 14 and 15, nearly all State programs have lost professional staff over the 2-year period ending December 31, 1978, especially personnel with 3 or more years experience. The most commonly cited reasons for leaving were increased salaries and benefits.

Table 14

Professional Staff Leaving State Programs during 2-Year Period Ending December 31, 1978

			Staff leaving program		
				With 3 or more years experience	
Program	States responding	States with staff losses	Total	Number	Percent
CAA	45	a/42	500	302	60.4
CWA	45	b/41	855	489	57.2
FIFRA	46	c/30	77	25	32.5
RCRA	46	38	166	94	56.6
SDWA	40	c/38	153	97	63.6
Total			1,751	1,007	57.5

a/One other State had staff losses but could not provide numbers.

b/Four other States had staff losses but could not provide numbers.

c/Two other States had staff losses but could not provide numbers.

Table 15

Most Common Reasons Cited for Staff Leaving State Programs during 2-Year Period Ending December 31, 1978

		Salary and benefits		Advancement opportunities	
Program	States with staff losses	Number	Percent	Number	Percent
CAA	43	37	86.0	14	32.6
CWA	45	40	88.9	12	26.7
FIFRA	32	19	59.4	6	18.7
RCRA	38	26	68.4	8	21.1
SDWA	40	24	60.0	6	15.0

Note: Percentages not additive because of multiple responses.

In a 1977 study performed for Georgia's Environmental Protection Division (EPD), the consultant also concluded that salary differentials are a major problem:

> "Immediate and future salary compensation is still undoubtedly a major cause of losses at all professional levels. Private industry, consulting and engineering firms, and the federal government have tended to hire the more qualified professional employee who has been trained by the EPD. The salary surveys from these sources do indicate that the major salary differentials are at the II level and above. These are the employees that are trained by the EPD for 1-2 years or more, who have become knowledgeable about the environmental programs, and are the future managerial personnel. These represent 80 percent of the resignations during the past year."

Tables 14 and 15 clearly show this situation is not unique to Georgia.

The director of Missouri's Water Pollution Control Program commented on the low salaries of entry-level engineers but added that the most critical problem is senior-level engineers. He pointed out that the maximum salary for his top engineer is $26,800 a year, but that engineer is easily worth $11,000 more on the outside. Wisconsin's director of the Bureau of Air Management said that the bureau has 10-15 vacant positions and that number will continue to grow. He said that many of skilled people are leaving for better paying jobs with the Federal Government or the private sector.

NAS, in its 1977 report entitled "Manpower for Environmental Pollution Control," described the impact that losses of experienced personnel have had on program operations:

> "Manpower aspects of pollution control are a key factor in carrying out the nation's goals for improving environmental conditions. Shortages of well-trained and experienced manpower can slow the development of control technologies, affect program administration, cause inefficient control plant operation and process failures, and boost the costs of achieving environmental controls."

Salaries not the only obstacles

Other barriers to filling positions exist in addition to State salary structures. Table 16 shows how the State program directors evaluated a listing of potential obstacles to filling positions. While State salaries are clearly the greatest overall problem, other obstacles can be significant either on a program or individual State basis.

Table 16

Percentage of Program Directors Identifying Following Factors as Very Great or Substantial Obstacles to Filling Positions on a Timely Basis (note a)

	State program (No. of responses)				
Factors	CAA (41)	CWA (41)	FIFRA (21)	RCRA (40)	SDWA (39)
	(percent)				
State salary structure	75.6	78.0	61.9	70.0	71.8
Ceilings on authorized staff levels	39.0	29.3	42.9	32.5	51.3
Statewide freeze on all hirings	14.6	19.5	38.1	20.0	35.9
Statewide personnel reductions	4.9	7.3	23.8	12.5	23.1
State civil service procedures	48.8	56.1	38.1	35.0	17.9
Limited recruiting efforts	19.5	24.4	14.3	7.5	12.8
State residency requirements	7.3	14.6	19.0	2.5	0.0
Availability of disciplines needed	51.2	41.5	23.8	55.0	51.3
Perceived temporary nature of Federally supported positions	14.6	22.0	47.6	37.5	25.6

a/Total responses: 182.

The time needed to approve and fill positions at the State level varies among States, but it is time consuming. The acting director of Connecticut's Air Compliance Unit said that it takes 7-12 months to fill vacant positions. Massachusetts' program officials explained that it takes 5-9 months to justify and fill new State-funded positions and 3-5 months if federally funded. These ranges assume no major complications. Florida's deputy director of Water and Special Programs complained of the time necessary to follow State civil service procedures. He explained that to promote a person from within requires 6-8 weeks; to fill a position from outside the agency will add 2-3 weeks to that time frame; and to advertise nationally, 3-5 months is a reasonable time to expect. Those time frames assume the State has a competitive salary to offer. Table 17 shows, from the perspective of State lead environmental agency administrators, how many months are generally needed to approve and fill new staff positions.

Table 17

Months Needed to Approve and Fill New Staff Positions

Months needed	Approving new positions Number	Approving new positions Percent	Filling new positions Number	Filling new positions Percent
Less than 1	3	6.7	0	0.0
1-2	18	40.0	10	22.2
3-6	19	42.2	26	57.8
7-12	2	4.4	6	13.3
12-18	0	0.0	1	2.2
Indefinite	0	0.0	1	2.2
No response	3	6.7	1	2.2

Note: Percentages do not total 100 percent due to rounding.

In addition to the time involved in following State civil service procedures, the procedures themselves can create obstacles to filling positions. For example, the director of a State water pollution control program pointed out that State civil service procedures require all applicants to take a written examination, which in itself is insulting to an individual who has just received a bachelor's or a master's degree. As a result, those with less-marketable attributes are the ones who sit for the exams.

Some State officials pointed out that their State legislatures are opposed to any State program growth even if positions are totally federally funded. The administrator of Wyoming's Air Quality Division told us that for the past 2 years the State legislature has refused to approve two new federally funded positions for the air program, which has hindered the program's new source review process. According to the director of Vermont's Air and Solid Waste Programs, five federally funded air and solid waste positions were removed from his fiscal year 1979 budget by the State legislature.

A State requirement that its employees must be residents of that State can create problems. For example, the assistant director for regulations in Rhode Island cited that State's residency requirement as a significant problem which no one seems willing to change. He pointed out that his State is in the enviable position whereby it could attract engineers commuting from the two neighboring States, but he has had to turn down several good candidates because they were unwilling to move to Rhode Island.

Also directly related to State staffing problems is the amount of supporting Federal grants. If those grants do not increase each year to at least reflect increases in State salaries, the States have a new problem. For example, the director of Iowa's Air and Land Quality Division told us that over the last 5 years Iowa has had to reduce air program staff by five or six people because Federal funding remained constant while State employees received annual pay raises.

Some programs have alleviated State staffing problems

No solutions short of increasing State salaries will resolve the major barrier to recruiting and retaining staff at the State level. However, several interim solutions have worked. EPA-funded fellowships for State employees have provided incentives for staff to stay with State government, at least for the short term, despite the low salary. Moreover, EPA has also assigned EPA employees to State agencies to supplement State staff on a temporary basis.

Training funds for State agency employees

EPA has provided fellowships for State agency personnel as authorized under CAA, SDWA, and CWA. Although State officials have been supportive of such programs because they provide real benefits to State employees, Federal funding for them has been significantly reduced over the past few years.

The academic training grant programs have been beneficial. For example, the director of Mississippi's Division of Water Supply stated that EPA training funds used as scholarships for senior-year undergraduate students enabled his agency to fill positions he would not have been able to fill otherwise because of low salaries. As a condition to receiving such a scholarship, the individual agrees to work for the State for 18 months after graduation. The director pointed out that this program does not provide a long-term solution, but at least for the short term his agency has been able to attract top-quality people. The director of the Massachusetts Air and Hazardous Materials Division stated that the EPA graduate fellowship program has aided his air program immensely. Under this program, EPA pays all education costs to send State employees to graduate school. Massachusetts employees go to school on a part-time basis, usually at night. According to the director, the program has a dual benefit of training the individual and providing an incentive for the employee to stay with the State agency at least until his or her education is completed.

While academic training grants for State agency employees have aided the States, the EPA academic training budget over the past 3 fiscal years has been substantially decreased and in some cases totally eliminated. (See table 18.) For fiscal years 1979 and 1980, the budget did not provide for academic training. Rather, funding was provided by congressional action.

EPA assignees

EPA uses a variety of mechanisms to assign Federal staff to State agencies. These include the transfer of personnel under the Intergovernmental Personnel Act, assignment of staff paid for from the State's program grant, and temporary assignment of staff at EPA expense to provide technical aid to the State agency.

The director of Vermont's air pollution control program said that EPA hired a planner for his agency--paid for out of the State's annual program grant--who was a great help to the State, particularly in the recent SIP revision process. He stated that without the employee, his agency would not have submitted its SIP in a timely manner.

The former director of Massachusetts Air and Hazardous Materials Division was an EPA employee assigned to the State under the Intergovernmental Personnel Act. Under this program, Federal employees are assigned to a State agency, usually for a 2-year period. The State and Federal agencies agree on how much of the employee's salary each agency will pay. The act also provides for State agency personnel to be assigned temporarily to a Federal agency. In the case of the director, EPA regional officials said he was instrumental in significantly improving the State's air pollution control program. As further evidence of his success, the Governor appointed him commissioner of the Department of Environmental Quality Engineering, where he oversees several major environmental programs, including the air program.

Table 18

Academic Training For State Personnel: Number of Fellowships and/or Dollar Expenditures

	Fiscal year 1978, actual		Fiscal year 1979, actual (note a)		Fiscal year 1980, estimated (note a)	
Program	Number of fellowships	Dollar expenditures	Number of fellowships	Dollar expenditures	Number of fellowships	Dollar expenditures
CAA	35	b/$500,000	c/0	$ 0	c/0	$ 0
CWA	101	350,000	50	175,000	50	175,000
SDWA	32	80,000	65	160,000	110	275,000

a/EPA's budget request did not provide any money for academic training--the expenditures were due to congressional add-ons.

b/The $500,000 for air pollution fellowhips during 1978 supported a total of 126 fellows--91 non-State in addition to the 35 State fellowships.

c/No new air pollution fellowships were funded during 1978 or 1979, but previous-year fellowships were administered. Additionally, 18 traineeships at $11,000 each were issued to post-secondary institutions during both 1978 and 1979 (total of $198,000 for traineeships each year).

STAFFING PROBLEMS COMPOUNDED BY UNCERTAINTY OF FEDERAL FUNDING AND BY PAPERWORK REQUIREMENTS

Because of the problems States have in hiring and retaining staff, it is imperative that every effort be made to minimize roadblocks which could compound those problems. Such, however, has not been the case. Uncertain Federal grant amounts and late grant awards force State programs to work in a crisis atmosphere which precludes realistic planning and negatively affects program implementation. In addition, EPA reporting requirements divert staff from program operations.

Uncertain Federal funding adversely affects programs

Lead agency administrators and many State program directors identified the uncertainty of future Federal funding as a major factor adversely affecting program implementation. Less than 25 percent of State lead agency administrators are satisfied with the amount of notice they receive of Federal funding. About 60 percent of program directors and lead agency administrators believe that uncertainty about future Federal funding is a substantial or very great obstacle to program management.

In its February 1977 report entitled "Federal Roadblocks to Efficient State Government, Volume 2," the National Governors Association described the need for certainty in Federal funding.

> "The need for increased certainty of federal funding levels is a function of the relative timing of federal and state budget preparation, and the increasing lead time needed to plan effectively for public expenditures.
>
> "State budget decisions are almost uniformly made on a time sequence closely paralleling federal decisions for the same fiscal year. With five exceptions, States begin their fiscal years on July 1. This means, for example, that most Governors will submit FY 1978 budget requests to their legislatures in January 1977, at about the same time the President submits his budget to Congress. However, because the federal fiscal year begins on October 1, three months after most States', the legislature in a typical State will have completed its FY 1978 appropriations by July 1, 1977, when the Congressional appropriation cycle is only half complete.

> "Since about 25 percent of a typical state government's expenditures are from federal funds, Governors and legislatures must make decisions about three quarters of their budget in the face of uncertainty about the remaining one quarter. Furthermore, since most federal funds require a matching contribution from the State's own resources, even a minor change in federal funds causes an immediate ripple effect in the way state funds must be allocated.
>
> "A federal decision to 'cap' federal spending for a program, to shift heretofore federal costs to States, or even to step up federal support for a program involving matching funds, means that States must reallocate their own resources, often after the legislature has adjourned."

The problem is further compounded in those 21 States on biennial budgetary cycles.

The overall result is that few States know when preparing their budgets what their Federal funding support will be; they guess. In our report entitled "Fundamental Changes Are Needed in Federal Assistance to State and Local Governments" (GGD-75-75, Aug. 19, 1975), we pointed out that because of funding uncertainties, State governments are frequently confronted with short leadtimes to apply for available assistance, as well as difficulties in planning for continuation of existing programs.

Specifically, we stated:

> "Uncertainty about funding reduces the value of planning on the part of State and local governments and makes such planning more difficult. Such uncertainty makes State and local governments react to Federal assistance as it becomes available and discourages planning for the integration of Federal programs into their functions. This impact on the planning process also makes program implementation more difficult and less efficient and effective."

Moreover, we noted that the uncertainty of continued funding or the level of future funding might lead to staff terminations, and/or resignations and unrealistic or conservative planning.

Funding problems identified in 1975 still exist. State environmental officials identified the principal impacts of funding uncertainty as (1) the reluctance of State legislatures to support programs without a firm Federal commitment for future funds and (2) the obstruction of program planning.

State legislative support depends on Federal funding

State officials noted that having to go before the State legislature unsure of future Federal funding levels has an enormous negative impact on their programs. As pointed out by the Council of State Governments in its 1977 report on diffuse source pollution, "yo-yo funding has bred a high degree of caution among State and local officials who are concerned about inheriting a program they cannot afford." State legislatures are reluctant to approve resources or to allow increases in staff without a solid commitment of future Federal funds. The problem is more acute in the pesticides, solid waste, and drinking water programs, probably because the air and water pollution programs have been around long enough to establish a track record of funding continuity.

In some cases, State program directors provide extremely low estimates of Federal funding support to minimize chances of any shortfall. For example, the director of Nevada's safe drinking water program said that his agency experienced much opposition from the State legislature when seeking program primacy because the program had no record of Federal funding continuity. Because of the legislators' concern, the director admitted he is overly conservative in estimating Federal funds in his budget. And because he is authorized to spend only the amounts of State and Federal funding approved in the budget, any Federal funds received in excess of the amount budgeted are used to reduce the State's share rather than expand the program.

Some State program officials pointed out that not knowing the level of Federal funding support hurts their relationship with the State legislature. The director of the Texas Division of Agriculture and Environmental Sciences submits his budget long before he has any idea of what the Federal funding will be. In August 1978, for example, he submitted his budget information for fiscal years 1980 and 1981. He said that because he has no idea as to the level of future Federal funds, he can make no realistic projection, making it extremely difficult to justify the program to the State legislature. Similar examples were provided by the directors of pesticide programs in South Dakota, Wisconsin, and Minnesota.

Staffing authorizations can be at stake if Federal funding levels are not known. For example, the directors of Hawaii's and Kentucky's solid waste programs maintain that the uncertainty of future Federal funding levels makes it difficult to get positions authorized because the State legislatures will not authorize positions without assurances of adequate future funding. Moreover, Mississippi's director, Division of Solid Waste Management and Vector Control, told us that the State legislature refused two needed positions because of the uncertainty of continued Federal funding.

Program planning impeded

Program planning is a requisite for maximizing program effectiveness and should at least allow for efficient use of available resources, improved managerial control, and establishment of goals and objectives which provide a means for evaluating staff and agency performance. While program planning is a cornerstone of implementing any program, State officials believe it is noticeably absent in environmental programs.

State program directors and administrators alike said the uncertainty of future Federal funding levels precludes effective program planning. For example, the director of Mississippi's Division of Solid Waste Management and Vector Control said that he must administer the RCRA program on a year-to-year basis because funding uncertainty precludes long-range planning. The acting director of Minnesota's Division of Water Quality said that funding uncertainty is the principal problem his agency faces. He wrote:

> "The funds made available under Section 208 have come to the state in an unpredictable manner. This caused an unrest among the staff and has made it very difficult to plan work for which contracts must be negotiated."

The greatest negative impact, however, appears to be in the CWA Construction Grants Program.

Historically, construction grant funding has fluctuated greatly, causing much disruption in State programs. The 1972 amendments to the Federal Water Pollution Control Act authorized $5, $6, and $7 billion for the program to be appropriated for fiscal years 1973, 1974, and 1975, respectively. However, because of a legislated change in the allocation formula and an illegal Presidental impoundment of $3 billion of those first-year funds, State programs were disrupted. The impact was described in the April 1976 Staff Report to the National Commission on Water Quality:

> "Thirty-one of fifty-four states and territories received less in 1973 allotments than for 1972, and in some instances--Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Arkansas, Louisiana, New Mexico, Texas, Oklahoma, Kansas, Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming and Arizona, for example--the reductions were substantial, i.e., 50 percent or more. * * * Considerable disruption faced these states."

The funding since 1976 has not provided State officials much certainty about future funding levels.

ASIWPCA, by majority vote of its membership, recommended to the Congress in May 1979 that construction grant funding should be appropriated at least 1 year in advance to alleviate that uncertainty. Specifically, ASIWPCA described the overall impact of uncertain funding levels in the program as follows:

> "Failure to appropriate funds in a timely manner and practicable amounts results in increased costs because of construction delay, interferes significantly with state and regional implementation of Section 208 plans, and erodes the confidence of local elected officials and environmental organizations regarding our Nation's commitment to clean water. Cyclic or erratic funding of construction grants is not conductive to rational construction grants program management. This creates inefficiencies in the grants processing procedures, creates staff uncertainty and instability, causes indecisiveness among local government officials and artificially escalates the cost of construction due to cycles in contract awards."

Multiple year or advanced appropriations have been recommended by us as well as many other organizations, including the National Governor's Association and the Advisory Commission on Intergovernmental Relations.

The Council of Environmental Quality in its 1977 annual report stated that the long-term assurance of construction grant funding is essential. Pointing out that it takes 2 to 3 years to move a project through planning and design into construction, the Council reported that "interrupted Federal funding disrupts State and local government planning and budgets." The importance of that long-term assurance of funding was described by several State officials.

Rhode Island's assistant director for regulations said that his State has had to segment projects due to inadequate funds available to assist municipalities. In order to plan for future project segments, it becomes crucial to know in advance what future funding levels will be. The assistant director added, however, that CWA has authorized $5 billion in fiscal year 1980 and others have proposed $2 billion, which means Rhode Island's allocation could be anywhere from $10 million to $25 million in construction grant funds. He asked, "How do you plan?"

The State Management Assistance Grant is a good example of the need for assured future funding. This provision (section 205(g)) was included in the 1977 CWA amendments as an inducement for the States to assume more program responsibility. Under this program, States can use the greater of $400,000 or 2 percent of their annual construction grant allocations to support program administrative costs. The problem is that the funding is linked to appropriations, which vary widely. For example, the chief of Nebraska's Water Division pointed out that in fiscal year 1979 Nebraska expected a construction grant allocation of $26 to $28 million, but received only $21 million because of reduced appropriations. He added that had Nebraska received the State Management Assistance grant and staffed on the basis of funding expectations, they would have had to terminate some employees.

Arguing for advanced appropriation of construction grant funds before the Senate Subcommittee on HUD-Independent Agencies of the Committee on Appropriations on March 9, 1978, the EPA Assistant Administrator for Water and Hazardous Materials stated:

> "If the States are going to be encouraged to adopt that authority and that responsibility, they are going to need the security of future funding because they are going to be hiring personnel under that authority. If they have to wait each year to determine whether the next year's funding is going to be there--they are going to be reluctant to accept that authority."

ASIWPCA, citing the same basic reasons, recommended that the Congress change the legislation to base State Management Asistance Grant funding on amounts authorized rather than amounts appropriated.

A State agency's credibility can suffer when it cannot accurately plan on future Federal funds. For example, Vermont's environmental agency threatened a municipality with enforcement action if bonds were not issued to help finance a wastewater treatment facility. The town reluctantly passed the bond issue, and the project was included on the State's funding priority list. About a month later, after the Federal budgetary cycle was complete, Vermont discovered that its share of construction grant funding had dropped from an anticipated $25 to $17 million. As a result, the town lost its funding priority because the State did not have enough money to help construct its treatment plant.

The chief of Vermont's Environmental Engineering Division said that cases such as this would not occur if States had advance knowledge of Federal funding. He pointed out that the biggest benefit of knowing funding levels in advance is that program planning would greatly improve. As a result, the public, the Governor, and the legislature would know program objectives and therefore be able to evaluate potential program effectiveness.

Federal program grants often issued late

Implementation and effectiveness of all environmental programs have been impeded due to late issuance of annual Federal program grants. Nearly half the State environmental officials said that the timing of Federal funding is a substantial or very great obstacle to managing their programs. Annual program grants are consistently late, resulting in termination or threatened termination of State employees and delays in purchasing equipment and in filling badly needed positions.

Many State program directors commented that Federal grants are consistently received well after the Federal fiscal year has started--sometimes as long as 5 months into the fiscal year. As a result, some State programs have come dangerously close to terminating employees because Federal carryover and/or State funds were almost depleted.

The New Hampshire pesticide program, however, for one was more unfortunate. New Hampshire was forced to terminate a total of five individuals over the years because of late program grants. New Hampshire's pesticides control supervisor stated that this staff reduction caused a large negative impact on his program because of the time required to train new people. He noted that regardless of how well qualified an individual may be, it takes a long time to become familiar with pesticide regulations. According to the supervisor, EPA headquarters does not seem to understand his problem. EPA headquarters officials have asked him why he does not pay the employees with State funds until the Federal grant is issued, and he has explained that the State legislature will not allow it.

Several State program directors said that late receipts of program grants delayed filling positions because States cannot hire people with Federal funds until grants are received. For example:

--New Mexico's Water Supply Program manager stated that in fiscal year 1978 the State received its SDWA grant 3 months late. New Mexico, like most States, does not permit deficit funding, and the State could not hire people or purchase equipment until the grant was received.

--The director of Missouri's Air Quality Program told us that he was told how much his fiscal year 1979 Federal grant would be in September 1978, but the grant was not approved until late January 1979. He said the delay had a significant negative effect on the State's air program because he could not start to fill badly needed positions until the grant was actually received.

--According to the head of the Solid Waste and Vector Control Branch, North Carolina's solid waste program was to fill five positions with its fiscal year 1979 RCRA grant. The State, however, did not receive the grant until January 25, 1979, and did not complete filling the positions until March 1979--halfway through the Federal fiscal year.

--New York solid waste program officials said that late award of the RCRA program grants in both fiscal years 1978 and 1979 delayed hiring. In fiscal year 1979 the grant was not awarded until January 31, 1979, and the filling of about 22 positions was delayed by over 4 months.

EPA paperwork requirements impede program implementation

Although many State officials in all environmental programs commented on excessive EPA-required paperwork, the problem is most severe in the water pollution and solid waste programs. State officials in charge of administering CWA were especially critical of the paperwork requirements for discharging NPDES duties, whereas solid waste officials were most critical of differences in reporting requirements between EPA regions.

Oversight of CWA programs

State water pollution control officials believe their management prerogatives, especially in the NPDES program, are severely limited by excessive EPA oversight. Officials noted that every State-written NPDES permit is reviewed by EPA and is subject to EPA "override." EPA was accused of "nitpicking" State managerial decisions. As one water pollution official said "not a day" goes by that EPA does not return a permit for minor changes which have absolutely no bearing on water quality.

ASIWPCA's May 1979 report recommending improvements to the Construction Grants Program concludes that "NPDES permit delegation is actually semi-delegation." The report points out that EPA regional offices conduct nearly concurrent reviews of State-issued NPDES permits, "which approximately doubles the necessary resources" needed to do the job. Moreover, the States consider the paperwork (reporting requirements for EPA's overview of State NPDES programs) as "non-productive for State programs."

The administrator of Oregon's Water Quality Division summarized the sentiments of many States when he said: "The NPDES program has become a bureaucratic paperwork procedural jungle with no relationship to water quality * * *." The chief of Mississippi's Water Division noted that up until 1978 the States were required to prepare four- to five-page fact sheets on major facilities given NPDES permits. He found the requirement reasonable because it provided EPA and the public data on major polluters. However, in 1978 States were required to prepare fact sheets on all facilities being permitted. The official believes this is totally unrealistic. The director of North Dakota's Water Supply and Pollution Control Division noted that copies of all NPDES permits issued by his division are sent to the EPA regional Office, yet EPA still requires the State to provide quarterly reports on the permits.

In its May 1979 report, ASIWPCA made several recommendations for reducing paperwork requirements imposed on the States and commented specifically on monitoring reports as follows:

> "The quantity of repetitive information necessary to document plant adequacy and continuing performance level is far in excess of that required to ascertain compliance or to communicate compliance status. The present forms and system are designed and developed to provide oversight information to USEPA which one would expect from an unreliable contractor - not a partner capable of equally valid professional judgements."

Water pollution control officials in one State pointed out that EPA controls not only the NPDES program but all programs under the CWA. They stated that EPA reviews virtually everything the State does, resulting in an expensive double layer of administration. As one State water pollution official wrote:

> "I believe that many State water pollution control agencies have matured sufficiently to run the programs on their own entirely. An annual audit should be sufficient to determine whether the State should continue to administer a program or be relieved of the delegated responsibilities."

This official suggested that EPA experiment with a 3-to-5-year block grant to States and let them totally administer the program. Periodic audits by EPA would determine whether the States should be allowed to continue administering the program. The chief of another State's water program concurs. He believes once a function has been delegated to a State, EPA's role should be to periodically review State performance and provide technical help as necessary.

Solid waste programs

The chief of the Montana Solid Waste Management Bureau stated that his biggest concern is that EPA is federalizing Montana's solid waste program. He commented:

> "Our division director sees us moving in the same direction as the air and water programs, which have virtually come to a standstill because of EPA red tape and excessive intervention. We have had a very active solid waste program in this State which has accomplished a great deal in the past 10 years. During that time, we have had a very fine working relationship with our EPA Regional office. Due to the increased manpower they now have because of RCRA we find ourselves devoting most of our time answering requests, formulating five year plans working out so called State, EPA agreements which

> turn out to be EPA mandates. Instead of getting out in the field working with the counties and cities solving the solid waste problems we're now confined to the office formulating plans that mainly gather dust."

The New York and West Virginia solid waste program directors criticized as excessive the reporting requirements of EPA Regions II and III. West Virginia must document the time it takes to perform various tasks, including permitting facilities, conducting inspections, closing dumps, etc. New York's grant agreement requires that the State submit quarterly progress reports detailing the time required in man-months for each inspection conducted and each enforcement action taken. For each new permit issued, New York must report the time required in man-months for (1) facility technical assistance, (2) application evaluation, (3) site inspection, and (4) final issuance. The Solid Waste Branch chiefs in EPA regions I (Boston) and IV (Atlanta) told us they do not require such detail from the States within their regions. The chief of EPA region I's Solid Waste Branch said that to effectively use the data, the regional office would need a sophisticated information system, which at the time had not been developed.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

Overall, the EPA-State partnership envisioned by the Congress has not materialized. The causes of the poor relationship between the States and EPA are many and varied, but the message from State environmental officials is loud and clear--the EPA-State partnership needs help.

State environmental officials for the most part have a good working relationship with EPA regional office staffs. State officials generally believe that regional staffs understand their problems and attempt to assist them in meeting environmental objectives. Where conflicts do arise with regions, they usually result from disputes over EPA oversight activities or failure of regional people to communicate with the States before taking some action within the State.

In direct contrast to the relationship with EPA regions, State officials characterize headquarters officials as inexperienced and having no conception of the impact their decisions have on State programs. They believe that headquarters neither understands the real workings of environmental programs nor appreciates the obstacles States face, both individually and collectively, when trying to implement EPA directives. Moreover, State officials believe that EPA headquarters simply does not trust the States, based on the fact that EPA maintains virtually total control over its programs through regulations, guidelines, and grant conditions. The States' criticism, however, arises not because these controls exist, but rather because they are often delayed, inflexible, and too detailed.

EPA has rarely met statutory deadlines for issuing major regulations, but it is not entirely at fault. In some cases, the Congress, in establishing statutory deadlines, has not always recognized EPA's lengthy regulation development process. To State officials, however, the reasons for the delays are not the real concern. The issue is the simple fact that regulations are delayed. Late issuance in turn delays program implementation and, from the State viewpoint, breeds confusion and hurts program credibility.

Numerous studies and EPA testimony have pointed out marked differences between individual States. Yet, States claim EPA regulations generally treat all States the same and require individual States to force themselves into an ill-fitting national mold. State initiatives and managerial prerogatives are stifled, and costs for environmental controls are often increased.

In addition to regulations, other mechanisms exist which impede program operations by imposing Federal requirements on State programs. Again, the criticism is of the detail and inflexibility of these requirements as they exist in grant conditions, guidance memorandums, and guidelines.

On the State side of the coin, staffing constraints are a fact of life. State vacancy and turnover rates are high because State program managers find it difficult to recruit and retain employees. Of particular concern is that most of those leaving State programs to take jobs elsewhere have 3 of more years experience. These are the trained, knowledgeable people who would have been potential State program managers. When they leave, the continuity and effectiveness of State programs are impaired.

Although other contributing factors exist, the root cause of these staffing problems across all programs is clearly low State salaries. State salary structures are not competitive with salaries offered by private industry and the Federal Government. Moreover, in the current climate of fiscal restraint and anti-governmental growth, the disparity in salaries is not likely to change.

While the Federal Government can do little to improve State salaries, it has offered benefits to supplement them and make State employment more attractive. Under the various environmental acts, for example, State employees can be given fellowships and scholarships which, at least for the short run, provide an incentive to remain in State employment. Federal funding for these programs, however, has been drastically cut in recent years. EPA has alleviated the problems of staff vacancies somewhat by using various mechanisms to temporarily assign EPA employees to State agencies.

Existing staffing problems are magnified by delayed and uncertain funding as well as by EPA paperwork or reporting requirements. Funding uncertainties preclude effective planning for staff utilization and erode State legislative support for environmental programs. Moreover, reporting or other paperwork requirements dilute already limited staff by diverting employees from program operations.

The common thread interwoven throughout these various managerial obstacles is the strongly held conviction of State environmental officials that EPA does not involve them directly in the decisionmaking processes which govern their programs. As justification for greater State input into these processes, State officials point to EPA regulations and guidelines which negatively affect State programs by making unreasonable demands on State resources. As a result of not having that input, State environmental officials believe they are the forgotten partners and are skeptical of new EPA initiatives. That attitude, left unchecked, could have significant ramifications for the EPA-State partnership. It is those same officials who must defend the programs and justify the resources and enabling legislation to carry them out at the State level.

Although State environmental programs are in place, the days are gone when environmental programs could ride the wave of popular support. Now, like other State programs, environmental programs must justify their position within State priorities and come to grips with major concerns over government growth and fiscal restraint. States are concerned about the State resources needed to carry out Federal environmental programs as well as the uncertain prospects of continued Federal funding. Moreover, the time is coming, if it has not already arrived, when States may refuse to take on Federal environmental programs if the regulations do not provide necessary flexibility and Federal funding is inadequate.

No easy solutions exist to resolve years of accumulated State frustration, distrust and skepticism. Any solutions will require a concerted effort by both EPA and the States to make the partnership work by providing good communication and interaction between the partners. The States must be made to feel that they are equal partners and are directly involved in the decisions which affect their programs.

RECOMMENDATIONS

We recommend that the Administrator, EPA, establish as a high priority in the agency, in conjunction with State representatives, a formal program to improve the EPA-State partnership, including:

--Establishing procedures to ensure that early State agency input is solicited and considered before any action is taken having a direct bearing on State program implementation.

--Establishing joint EPA-State committees for each program to review its various aspects, identify implementation problems, and advise the EPA Administrator.

AGENCY COMMENTS AND OUR EVALUATION

In commenting on our draft report, EPA, in a letter dated May 14, 1980 (see app. II), agreed that it is a valid presentation of State perceptions, but said that it lacked balance since only State officials were surveyed. EPA also noted that the report reflects perceptions based on past events rather than more recent ongoing efforts by the States and EPA.

We agree that the report presents primarily State perceptions, but for a good reason. Since the States are generally responsible for implementing these programs, we believe an understanding of the managerial obstacles they face is critical to improving overall program administration. We do not agree that the report lacks balance. In every instance where States identified program constraints, we confirmed their validity. Moreover, while we agree that these State perceptions are the result of years of accumulated frustration, they continue to cloud EPA-State relationships.

EPA stated that development of realistic State/EPA agreements is a high priority within the agency and is intended to clarify EPA and State roles in actual program implementation. We agree that the agreements are a good idea, but we do not believe they are a panacea for all the problems this report addresses. Also, as we have pointed out, some States say that the way the agreement process was implemented is actually hurting the overall concept.

On our recommendation to establish a formal program of consultation with State representatives, EPA stated it is in the process of getting States more directly involved early in the regulation development process. This is a step in the right direction, but the concept should not stop there. The States should also be involved in other matters, such as policy and program guideline development, which also affect State implementation of Federal programs.

EPA disagrees with our recommendation to establish advisory committees for each program, because it is attempting to bring environmental programs together. Moreover, EPA pointed out that in response to the Federal Advisory Committee Act, Public Law 92-463, 86 Stat. 770 (1972), and the Office of Management and Budget, it now maintains only seven advisory committees, four of which are statutory. EPA stated that the establishment of additional advisory committees to the extent the recommendation seems to contemplate would result in a proliferation of advising committee activity beyond the limit contemplated by the Congress in the Federal Advisory Committee Act.

While we do not disagree with EPA's focusing on an integrated approach to environmental programs, we cannot overlook the fact that EPA guidelines, regulations, and policies are program specific and that EPA itself and most States are organized on a programmatic, not a functional, basis.

Also, we do not agree that our recommendation is not in accordance with the Federal Advisory Committee Act. The intent of the Act was to restrict the proliferation of advisory committees in areas where they would not be effective and to establish standards and uniform procedures to govern the establishment, operations, administration, and duration of advisory committees. However, neither the Act nor the Office of Management and Budget specifically limits the number of committees EPA could form. Given the problems identified in this report and the recognized need for State involvement in environmental decisionmaking, we believe the advisory committees are essential. We also believe that in establishing the needed advisory committees, EPA can establish uniform procedures to ensure that committee activities are directed to areas where they would provide much needed State input and would be effective. Moreover, since some programs are under the guidance of the same EPA operating officials, EPA may determine that fewer than five advisory committees would be sufficient.

On flexibility, EPA pointed out that it is impossible to write standards and regulations for national health protection and accommodate all regional and State differences. We agree that this is a problem, but we also note that the use of advisory committees would provide an excellent forum for considering these differences.

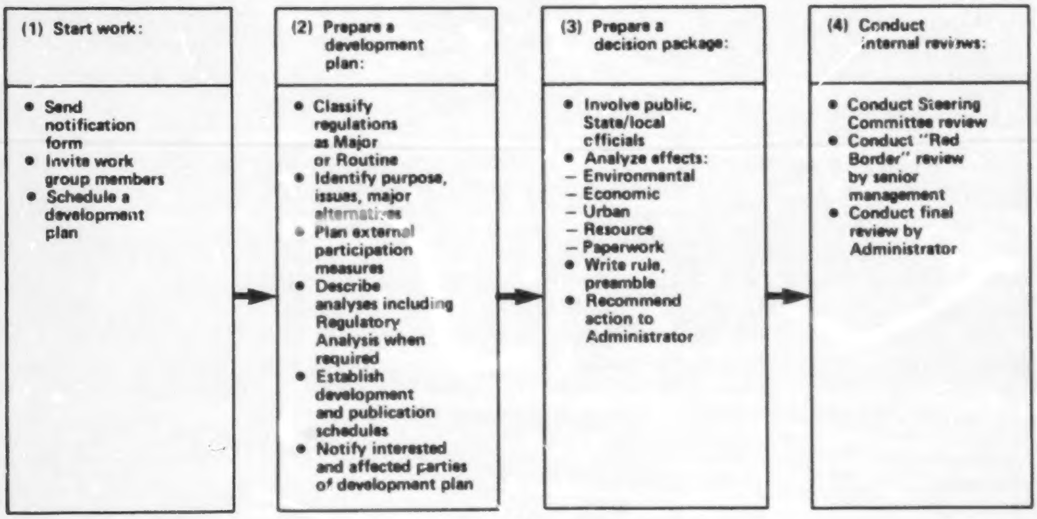
EPA agreed that State salary structures are a definite impediment to attracting and retaining high-quality professionals and stated its position that the States must take the initiative to justify and document salary adjustments. EPA also provided several technical changes to the report, which we made where applicable.

EPA PROCEDURES FOR DEVELOPING REGULATIONS

A typical regulation is developed in a four-stage process: (1) starting work on a regulation, (2) preparing a development plan, (3) preparing a decision package, and (4) conducting a three-part internal review before publication. (See figure 2.) Each regulation goes through the third and fourth stages twice, first as a proposal and again in final form. The following process describes the steps in the EPA manual on decision making now being developed.

FIGURE 2

STAT STAGES IN THE DEVELOPMENT OF SIGNIFICANT EPA REGULATIONS


(1) Start work:
• Send notification form
• Invite work group members
• Schedule a development plan
(2) Prepare a development plan:
• Classify regulations as Major or Routine
• Identify purpose, issues, major alternatives
• Plan external participation measures
• Describe analyses including Regulatory Analysis when required
• Establish development and publication schedules
• Notify interested and affected parties of development plan
(3) Prepare a decision package:
• Involve public, State/local officials
• Analyze effects:
– Environmental
– Economic
– Urban
– Resource
– Paperwork
• Write rule, preamble
• Recommend action to Administrator
(4) Conduct internal reviews:
• Conduct Steering Committee review
• Conduct "Red Border" review by senior management
• Conduct final review by Administrator

SOURCE: ENVIROMENTAL PROTECTION AGENCY

STARTING WORK ON A REGULATION

Regulations are generally developed in response to a congressional statute or an EPA determination of a need for new regulation. When an EPA assistant administrator for an office (the Offices of Water and Waste Management; Enforcement; Toxic Substances; or Air, Noise, and Radiation) decides to start work on a new regulation, the assistant administrator sends a notification form to senior EPA management. The notifying office is referred to as the lead office and has primary responsibility for writing the new regulation.

The notification form indicates whether the new regulation is "significant." It invites interested offices to assign personnel as work group members. A work group consists of representatives from the major media offices; EPA regional offices; and the Offices of General Counsel, Legislation, Planning and Management, and Research and Development. In addition, representatives from the Offices of International Activities, Civil Rights, Federal Activities, Land Use Coordination, and Public Awareness may serve on work groups.

The notification form sets a date for submitting a development plan to the steering committee, which oversees the mechanics of the process and conducts the first internal review of materials prepared by the lead office.

PREPARING A DEVELOPMENT PLAN

The assistant administrator for the lead office appoints a chairperson for the work group assigned to work on significant regulations. The EPA office wishing to write the new regulation cannot officially begin drafting the new rule until the EPA Administrator has received the development plan. The lead office request for clearance must include a development plan, which is put together with the advice and assistance of the work group. The initial clearance is intended both to prevent unnecessary Federal regulation and to guard against plans that do not adequately involve interested groups in decisionmaking.

An early step in this process is deciding whether the significant regulation falls into the "routine" or "major" class. Development plans for routine regulations are approved by the lead office and reviewed by the steering committee before substantial work begins. Development plans for major regulations must also pass through a "red border" review (an internal review by all assistant administrators, General Counsel, and chief staff office directors), with heads of EPA's 10 regional offices also having an opportunity to comment. The plans must receive the Administrator's approval before substantial work begins.

A development plan includes an extensive list of items:

--A brief description of the possible need to regulate and the consequences of not regulating.

--A timetable with target dates for identifying and notifying interested outside parties, completion of the initial draft, internal and external review of drafts, award and completion of contract work, any required progress reports, steering committee review, publication of the proposed regulation, end of the public comments period, and promulgation of the final regulation.

--The text of a Federal Register notice that describes the purpose of the proposed action, the development schedule, the issues that must be resolved, the alternatives to be considered, the special analyses that will be conducted, the plan to obtain external participation, the name and location of an appropriate EPA contact person, and an invitation for comments and solicitation for submission of needed information.

--A determination on whether the significant regulation is routine or major.

--A list of issues to be resolved.

--A summary of the major options that will be evaluated, including a discussion of whether alternatives or supplements to direct regulation are feasible.

--A list of any normally required materials that the work group expects to omit from the decision package, with a brief explanation.

--A list of offices within EPA whose expertise and assistance will be needed and a plan for coordination with EPA regional offices.

- --A plan to involve those parties outside EPA, indicating how persons interested in and affected by the regulation will be identified, notified, and brought into the process.

- --An estimate of EPA money and personnel needed to develop the regulation.

PREPARATION OF A DECISION PACKAGE

After the development plan is completed and the Administrator authorizes work on the new rule, the work group begins analyzing alternatives, assembling support materials, and writing the preamble and regulation. These items make up the decision package. While members of the work group may write portions of the document, the work group chairperson has overall responsibility for regulation drafting and is accountable to lead office superiors who provide guidance on the substance, procedures, and policy of the regulation.

The decision package contains the following items:

- --An action memorandum: A brief summary of the regulation, including a description of alternatives considered (with a summary of incremental environmental and economic effects, where feasible); environmental, economic, and resource impacts; unresolved issues; anticipated public reactions; recommended action; and a summary of why the recommended alternative is the least burdensome way to accomplish environmental goals.

- --Federal Register documents: A preamble written in plain English that describes the facts and rationale for the decision to regulate, how the regulation fits into the larger regulatory program, and how the recommended action is the least burdensome way to accomplish environmental goals.

- --Analyses: Support documents that identify and quantify the regulation's environmental effects, economic impacts, energy impacts, technical feasibility, anticipated barriers to implementation, alternatives and supplements to direct regulation, urban and community impact, and operating assumptions EPA has made when the impacts cannot be determined exactly.

- --Resource requirement summary: A summary of money and personnel that EPA and State and local governments will need to implement the regulation.

- --Reporting impacts statement: Details of the impacts of reporting and recordkeeping on those subject to the regulation.

- --Public participation summary: Comments from other Federal agencies and State and local governments and EPA's response to each major comment.

- --Evaluation plan: A plan and schedule for subsequent evaluation of the regulation's effects.

The working group maintains a documentary file in the course of rulemaking to facilitate compilation of the formal administrative record if the regulation is challenged in the courts.

CONDUCTING INTERNAL REVIEWS

After the lead office assistant administrator approves the decision package, it enters prepublication review. This process has three parts: steering committee review, red border review, and final review by the Administrator.

The steering committee reviews all significant regulations to help resolve any issues on which the work group does not reach consensus and to make sure the decision package meets standards of completeness, quality, and comprehensibility. When the steering committee resolves a major issue, it identifies for senior management the nature of the issue and the resolution reached.

The red border review involves all assistant administrators, General Counsel, and chief staff office directors. The EPA Administrator's review completes the EPA process for a proposed rule or standard.

The proposed rule then appears in the Federal Register, and formal comments are requested from all interested parties. Normally the public comment period is 60 days. Despite any earlier attempts to obtain the views of affected groups, this notice-and-comment device usually reveals issues that require further resolution.

At the close of the public comment period, the regulation is returned to the working group for preparation of a final rule. The work group reworks the regulation and gains steering committee, red border, and Administrator clearance. Finally, the Notice of Rulemaking is published in the Federal Register.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 14 1980

OFFICE OF
PLANNING AND MANAGEMENT

Mr. Henry Eschwege
Director, Community and Economic
Development Division
United States General Accounting Office
Washington, D.C. 20458

Dear Mr. Eschwege:

The Environmental Protection Agency (EPA) has reviewed the General Accounting Office (GAO) draft of a proposed report entitled "Federal-State Environmental Programs Partnership - The State Perspective."

The findings in the report are valid because they are based upon subjective perceptions of "State" administrators. However, there is an obvious lack of balance in that the only group surveyed was "State" administrators. The perceptions of the State Environmental Program Administrators in general are the result of past events, ranging back to 1972, and do not reflect more recent ongoing actions and policies of both EPA and the States.

Current EPA policy places high priority on the development of realistic State/EPA Agreements in which both EPA and the States commit to specific activities. Emphasis is placed on program consolidation through the State/EPA Agreements to insure efficient management of scarce resources. EPA's FY 1981 Operating Guidance stresses this means for improving relationships with State and local governments. The policy of employing the State/EPA Agreement is intended to clarify EPA and State roles with the expectation of improving both accountability and performance. In effect, development of State/EPA Agreements by EPA's Regional Offices moves beyond the "Federal-State Environmental Programs Partnership" which your draft report describes from the State perspective.

Comments are warranted on the draft report's recommendations of improving EPA's relationship with the States by establishing a formal program of consultation with State representatives. Early solicitation of State input to environmental programs has been an evolving activity at EPA since its establishment some ten years ago. Consultation with the States during the regulation development process has generally been ad hoc with respect to the timing of the solicitation, the method of solicitation, and the issues to be considered. At present, under the leadership of the Office of Planning and Management's Standards and Regulations Evaluation Division, an improved regulations development procedure is being implemented. A highlight of that procedure is the management of the development process to insure ongoing consultation with the States as early in the process as possible, with frequent consultation on significant intergovernmental issues as the regulations are moved toward proposal in the Federal Register.

The second part of GAO recommendations is a bit disturbing. At a time when EPA is focusing on bringing environmental programs together to insure efficient management of scarce resources, GAO is recommending establishing advisory committees for each program. The effect of such an action can be expected to lead to fragmenting the consideration of issues. Also, EPA, in response to the Federal Advisory Committee Act (FACA) and OMB Circular A-63, has maintained only seven advisory committees, four of which are statutory. Establishment of additional advisory committees to the extent this recommendation seems to contemplate would result in a proliferation of advisory committee activity beyond the limit contemplated by the Congress in the FACA.

The following comments are provided for your consideration to improve the draft report's balance, accuracy, and clarity:

1. There are some limits to the extent that National programs can accomodate the individual needs of a State. For instance, the Safe Drinking Water Act requires the development of National standards which will lead to improved drinking water quality. While we attempted to consider State and Regional differences in setting these standards, it was impossible to completely factor in these differences, and, at the same time, provide equivalent health protection on a National basis.

A similar approach was applied in establishing requirements for the State program implementation regulations - minimum standards which would provide nationally consistent public health protection. In some States these minimum regulations were less severe than existing State requirements. In other States considerable strengthening was necessary to provide the minimum level of protection.

2. While we agree that the State salaries are inadequate to attract and retain high quality professionals, we feel that the States are able to rectify the situation. The cause of the State salary deficiency is usually associated with the State's civil service salary structure. We have initiated a pilot study in a few States to compare State water supply program salaries with similar private and industrial positions. The study results in these pilot States will then be used to justify and document salary adjustments to State personnel officials. A similar program in the States' wastewater programs in 1977 resulted in job and salary upgrading in several States. The point is that the States must take the lead in conducting these types of comparability studies. Without this type of commitment by the States there is little justification for the States' continued cry of an inadequate pool of professionals upon which to draw in staffing their programs.

3. In "Implementing RCRA -- establishing programs without regulations" on page 38, it is stated that at the time of the GAO review, EPA had not published in final form any significant RCRA hazardous waste regulations. We would like to point out that we have since published most of the significant Hazardous Waste regulations. They will have all been published by the end of the fiscal year. Table ten on page 39 should reflect the actual months to publish §3002 as 40 and §3003 as 40 rather than the estimated 42 months shown. The estimated months to publish §3005 is 42 rather than the estimated 36 months shown.

4. Of lesser importance are several editorial comments, as follows:

- There are some words missing from the last sentence on page 45;

  "The degree of flexibility in EPA's final ... key factor in several State decisions, etc."

- Something is missing between the last line on page 78 and the first line on page 79.

- The figures in Table 1, page 2, "Direct Grants for State Administration of Environmental Programs," were taken from EPA's FY 80 Budget Justifications. Some of the figures have changed. The estimated FY 79 figures (000 omitted) for Solid Waste is $32,190; the proposed FY 80 figures (000 omitted) for Solid Waste is $38,600. The Drinking Water figures in the same table include, in addition to the figures listed which are for public water supply grants, underground injection control grants after FY 78. The correct figures are, for FY 78 actual, $20,500 for public water supply (the difference is in carry-over funds); for FY 79 estimated, $26,400 for public water supply, and $7,600 for underground injection control; and for FY 80 proposed, $29,450 for public water supply, and $15,395 for underground injection control.

We appreciate the opportunity to comment on the draft report prior to its issuance to the Congress.

Sincerely yours,

William Drayton, Jr.
Assistant Administrator for
Planning and Management

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